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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1245

IN RE LORING J. WHITESIDE,
Petitioner

APPENDIX No. 2

LORING J. WHITESIDE
Petitioner, pro se.
South Pease Road, Woodbridge,
New Haven, Connecticut 06525

INTRODUCTION & INDEX TO THIS APPENDIX

As will be observed from the Petition, it was prepared with references to 3 APPENDICES: (1) a short one of 13 pages annexed to the Petition containing Opinion and action in the Court of Appeals; (2) the Appeals Appendix of 60 pages containing action in the District Court, annexed to a 21 page Statement & Brief; & (3) a 38 page APPENDIX attached to a QUASH MOTION in the District Court on March 20,1967. This arrangement was made under the mistaken belief that 9 copies of (2) & (3) could be filed under the provisions of Rule 23 (1)(i), which was changed on October 2,1967, withdrawing that privilege, and requiring the Clerk to return the 9 copies of each which had been sent. It would be impossible for the Court to verify the facts and issues herein without easy access to all of the rulings of the District Court and to all of the documents contained in the Appeals Appendix. Hence that APPENDIX has been converted into an APPENDIX NO.2, SEPARATELY printed, of which 40 copies are being filed of the complete book in which it was printed, with a new jacket, so that page references may be identified without a total reprint of the Petition. The references to the QUASH APPENDIX can now be verified only from the certified RECORD, unless it should be ordered printed by the Court.

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NOTE- Numerous cases and quotations therefrom will be found in respondent's ANSWER in the Appendix herewith at pages A-40 to A-52. Also 3 pages of citations and quotations are included as pages 9, 10 & 11 in MOTION to QUASH, 3 copies of which are being furnished under Rule 16 for the use of the Court, but are not printed in the Appendix. The INDEX above does not cover these other two sources of authorities.

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 31654

In re Loring J. Whiteside *Appellant*

BRIEF AND APPENDIX OF APPELLANT

STATEMENT OF THE CASE

This is an appeal filed July 20,1967 from the United States District Court for the District of Connecticut from a judgment of disbarment and from the denial of a motion for the disqualification of Judge Blumenfeld and from a denial of a motion to dismiss for lack of jurisdiction the order to show cause, all dated June 20,1967,and from a denial on July 13,1967 of a motion to vacate and set aside the judgment of disbarment.

Appellant is and has been a member of the bar of New York State and of the Federal Court of Appeals of the Second Circuit and of the Federal District Court for the Southern District of New York, since 1913 (76), with offices for 13 years of that time in New York City or White Plains; and more recently has become a member of the Federal District Court bar in Connecticut, and of the United States Supreme Court bar, with office adjoining his home in Woodbridge, Connecticut, a suburb of New Haven.

In May 1962 (77) his attention was called by the parents and sister of the deceased Olga Gallagher, who had been found dead in bed at the age of 45, on December 5, 1961, by her husband, Kenneth Gallagher,to circumstances, both before and after death, which indicated a likelihood of murder, with the surviving husband the prime suspect. Appellant thereafter observed the continuous and extraordinarily diligent state court efforts of Olga's next of kin for 4½ years through various attorneys and themselves to obtain underground bur-

ial of Olga's remains as required by her training and belief in the teachings of the Russian Orthodox Greek Catholic Church, which forbids cremation as insisted upon by the surviving husband in violation of her Constitutional rights under the 1st and 14th Amendments to freedom of religion as applied to the mode of burial.

In 1966, when all of their state efforts had failed, due principally to fraudulent evasions by the State Supreme Court of the issues and the Constitutional question involved, appellant was retained by Olga's next of kin to represent them in a Federal suit (# 11,551) seeking the enforcement of their Constitutional right to the kind of burial required by their religion, and compensatory and punitive damages for overt acts in a civil conspiracy of 22 defendants to block their rights or a hearing on the merits, as may be seen by reference to the amended complaint.(Sup.2,14). In February 1967 Chief Judge Timbers, after dismissing the complaint for alleged absence of a substantial federal question on September 12, 1966, instituted disciplinary proceedings (71) against the appellant for what was said to be alleging "criminal conduct on the part of several named and unnamed judges of the State Courts of Connecticut", in violation of CANONS 1 and 32 of Professional Ethics, which was said to constitute gross disrespect for State Judges, 5 of whom were in the Supreme Court, 2 in the Superior Court, and an 8th unnamed Judge since resigned from the Superior Court. The latter is shown by the U.S.Attorney's MEMO (79) to be former Judge Albert L. Coles of Bridgeport, charged with "aiding and abetting DeAndrade in attempted subornation of perjury" as disclosed by a state transcript. (Exhibit B). The principal other allegation in Complaint #11,551 considered objectionable by Judges Timbers and Blumenfeld as disclosed by the latter in his RULING ON PETITION TO QUASH (156-157) occurred in Complaint par.11, attributing to certain judges a "conspiracy to conceal the murder." (Sup.2,14). The order to show cause itself (71) specifies no objectionable allegations in the complaint other than those alleging criminal conduct of the judges, but have to be gleaned from pars. 2-A, 2-B, 3, 11, 20 & 21. It will be noticed in these 6 paragraphs that

it is the overt acts of the 8 judges which are recited and in no instance is the word "criminal" applied to them. Specific criminal violations are attributed to other defendants in pars. 4, 5, 6, 7, 8, 9, 15 & 16, (Sup.2) but in no instance to any judge. The complaint makes it clear that the wrongful acts of all 22 defendants, including the 7 judges, constituted a civil conspiracy. (Par.2-B, 12th line; & Par.18, last line) And made no pretence that they amounted to a criminal conspiracy.

It is conceded in the MEMO of the U.S.Attorney(81) that appellant's "conduct appears to be misguided rather than malicious" and that "he has not ** taken any steps to be abusive or otherwise act improperly toward the state court judges."

It will also be noted that:

1. All of the overt acts attributed to the 8 judges, including Coles, are material, relevant and essential to the civil cause of action, and could not in good conscience be omitted. This is mandatory under CANON 15 which specifies that "In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense."

2. CANON 29 of Professional Ethics compelled the appellant to "expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the bar (which includes judges) who has wronged his client." This is regarded, as shown by the heading of this CANON, as "UPHOLDING THE HONOR OF THE PROFESSION."

3. CANON 15 compels appellant to give his "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability, to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial dis-

favor or public unpopularity should restrain him from the full discharge of his duty."

4. No moral turpitude is attributed to the appellant in this proceeding. Nor is he charged with malice, fraud or dishonesty of any sort or degree.(81, last 8 lines)

5. In all of his public or private relations with the 8 judges involved, appellant's conduct has been scrupulously respectful, and the filing of the civil conspiracy suit against 22 defendants, of whom 7 are individuals holding the office of state justice or judge, was wholly within the scope of his duties as a member of the bar of the U.S.District Court and the CANONS of Ethice prescribed by the American Bar Association.

HOW AND WHEN PROOF OF THE JUDGE COLES ALLEGATION WAS MADE

On March 20,1967 appellant filed a MOTION TO QUASH all charges in the order to show cause and attached to it an APPENDIX of 38 legal size pages of which 12 were devoted to the Coles matter as follows: p.AP 4-11 (110-117), p.AP 24-25 (130-131) and p.AP 30-31 (136-137);and Par.18 (102) of the MOTION TO QUASH indicates clearly why appellant regarded it important to present these additional documents and one letter to clarify the Coles situation to show exactly what he did to aid and abet DeAndrade's attempted subornation of perjury and other crimes and breaches of professional ethics.

At the hearing on the MOTION TO QUASH held on April 3,1967 Judge Blumenfeld accepted as evidence, with the consent of both parties (3), the entire APPENDIX of 38 pages, and 3 EXHIBITS as follows: "A"- a 29 page Transcript of Hearing before State Judge John C. FitzGerald on March 22, 1963 for the purpose of showing by pages 5, 6, 14, 15 & 16 that it was everyone of several hundred sworn allegations in a 48 page affidavit filed on Jan.21,1963 which attorney DeAndrade insisted be repudiated as false and untrue by the 3 plaintiffs before he would permit underground burial of the deceased Olga Gallagher (8); "B" - a 14 page Transcript of hearing

before State Judge Albert L. Coles on October 25,1963, in which pages 10-14 establish the statement in Complaint Par.20 that "the transcript disclosed a Superior Court Judge aiding and abetting DeAndrade in attempted subornation of perjury and an attempt to extort a ransom under false pretences." (54); "C" - a 117 page PRINTED RECORD of State Appeal #5427 wherein is printed on pages 52 to 102, the aforementioned 48 page affidavit which serves as the foundation for the aforesaid quotation from Complaint Par.20. (54)

Excerpts from EXHIBITS "A" & "B" transcripts will be found in the APPENDIX as shown in its index, which when read in conjunction with the above mentioned 12 pages of documents in the MOTION TO QUASH Appendix, affords the best possible proof of what is set forth in the Complaint about the unidentified Judge Coles in aiding DeAndrade and defying his bounden duty under CANON 11 of Judicial Ethics, which he regarded as a dead letter inapplicable to him. Had he performed his duty under CANON 11, Olga's body would in all probability have been buried according to law within less than 10-days. By evading his duty and assigning irrelevant excuses therefor, Coles will have succeeded in postponing the burial for another 4 years by the time October 25, 1967 rolls around. There is nothing "unjust" or "unfair" about withdrawing an appeal when the purpose of it is achieved in a more direct and speedy manner.

HOW AND WHEN JUDICIAL CONCEALMENT OF MURDER WAS PROVED IN THIS PROCEEDING

The 11 page MOTION TO QUASH with its APPENDIX of 38 pages of letters and documents, filed March 20,1967 by the respondent (96-144), provided the best of documentary evidence to show how all the Justices of the State Supreme Court ignored, concealed and evaded every shred of murder evidence as well as all the issues in both appeals, and were discussed in pars.15,16,17 & 19 of the MOTION TO QUASH. Concealment of the murder evidence began with Probate Judge Leavenworth as is shown by the letter of Julia Cravens to him on July 9,

1962, and the letter of respondent to him on October 5, 1962 (108 & 109) (Quash AP 2 & 3). The TKACZYK letter of Nov.25,1963 to Chief Justice King and John Halloran's reply thereto of Nov.27 (118 & 119) (Quash AP 12, 13), present facts which show the lack of jurisdiction in the Supreme Court to take steps for dismissal and the possibility of the withdrawal of the appeal if the Superior Court grants a motion heard by Judge Klau on Nov.22. The letter and telegram to Chief Justice King of Dec.10 & 15,1963 (Quash AP 14), and the MOTION of Dec.26 for action by the Supreme Court under CANON 11 of Judicial Ethics, reciting 8 pages of "facts in the RECORD establishing Kenneth Gallagher as the murderer of his wife, Olga (Quash AP 15-23), were measures taken by the Tkaczyks to avert, if possible, any conclusion that the 5 Justices were joining with other Judges and attorneys to conceal murder evidence. But it was vain hope. As will be observed on Quash page AP 26 from the upper of 2 notices received from Clerk Horwitz,the MURDER MOTION under CANON 11 was dismissed for alleged lack of jurisdiction, and even the MURDER portion of the title was deleted when it came to publishing this disposition in 151 Conn.733, which was the only instance of altering the official title of a Tkaczyk case motion in 151 Conn.728,732 & 734. Yet there is nothing in Canon 11 exempting Supreme Court Justices from its operation, or from at least referring the facts therein stated to the proper authority in their estimation. It is a clear case of their sitting on the lid just as did Judge Leavenworth, supra.

WHAT JUDGE BLUMENFELD DID WITH ALL THIS EVIDENCE

On April 24,1967 in his RULING on petition to Quash (155)(p.A-1) Judge Blumenfeld completely ignored every particle of the evidence in the 38 pages of the Quash Appendix and in the 3 EXHIBITS, save only in the first paragraph of his SECTION III where he utilizes EXHIBIT "B" transcript simply as a means of identifying Judge Coles as being the anonymous judge mentioned in par.20 of Complaint 11551, apparently forgetting that it was U.S.Attorney Newman who identified Judge Coles on pages 4 & 5 of his MEMO.(79-80)

Judge Blumenfeld went further and ignored his mandatory duty under RULE 12 (b) of the Rules of Civil Procedure to treat any motion to quash as one for summary judgment, when matters outside the pleading are presented to, and not excluded by, the Court. When he showed no signs of observing his mandatory duty in this respect, respondent was obliged to remind him of it in a 5-page MOTION FOR RULING AS TO SUMMARY JUDGMENT filed on May 22nd.(169-173). Nine days later he sought to evade this mandatory duty in a RULING (174)in which he declared "The Federal Rules of Civil Procedure are not applicable to disbarment proceedings." He then capped the climax by shutting off due process completely by saying unabashedly "NO MORE MOTIONS WILL BE RULED UPON."(p.A-7)

This arbitrary and unconstitutional stand proclaimed by the Judge on May 31st was a brazen repudiation of U.S.Supreme Court decision in Holt v.Virginia, 381 U.S.131,136-137 (1965) which had been called to his attention on March 20,1967 on page 10 of the MOTION TO QUASH, where Justice Black for the Court said:

"It is settled that due process and the 6th Amendment guarantee a defendant charged with contempt such as this "an opportunity to be heard in his defense,- a right to his day in court and to be represented by counsel. In re Oliver,333 U.S.257,273. See also Gideon v. Wainwright, 372 U.S.335. The right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues. See Willner v.Com.on Character &Fitness, 373 U.S.96,105. And since a fair trial in a fair tribunal is a basic requirement of due process, In re Marchison, 349 U.S.133,136, it necessarily follows that motions for change of venue to escape a biased tribunal raise constitutional issues both relevant and essential. Cf.Irvin v. Dowd, 366 U.S.717, 722; Tumey v. Ohio, 273 U.S.510. **** (p.139) our conclusion is that these petitioners have been punished by Virginia for doing nothing more than exercising the constitutional right of an accused and his counsel in contempt cases such as this for doing

against the charges made. REVERSED & REMANDED."

Respondent was thus compelled to declare Judge Blumenfeld disqualified any longer as Judge in this proceeding and did so in paragraph 5 of his FIFTH AFFIRMATIVE DEFENSE of his ANSWER filed on June 12.(180-181). The closing sentences are as follows:

"The predicament in which a decent lawyer finds himself when confronted by a determined prejudiced Judge who won't even obey the United States Supreme Court is fantastic and sort of humorous. Anyway from this moment on, the respondent protests against any further action by Judge Blumenfeld in this case on motions or anything else. And refuses to waive his constitutional rights to due process which will render null and void any adverse action in the past or in the future by Judge Blumenfeld, whose jurisdiction in this case is utterly and completely gone."

This disqualification was based solely upon his own misbehavior and remarks, interlarded with sarcasm readily apparent on the record of his various RULINGS dated April 24, two on May 17 and the one on May 31, (155, 163,164,174) all of which are in the Appendix herewith. This record was supplemented by an affirmation found in paragraphs 2 & 3 (197,198) filed on June 30 in support of MOTION TO VACATE DISBARMENT JUDGMENT. By this time Judge Blumenfeld had abandoned all pretence to recognized judicial behavior and had leaped headlong into the very lamentable field of criminal misbehavior himself, when in his OPINION of June 20 (191), when speaking of Judge Cole's misbehavior and the concealment of murder evidence by the State Supreme Court Justices,he invented and pronounced the following falsehood(192):

"Mr Whiteside has not demonstrated in any manner that he had any grounds or probable cause whatever for making such assertions. He presented no evidence or facts to support them. ** During these proceedings he has failed to show cause why he should not be disbarred."

Thereby he ignored and even denied the existence of

all 38 pages of documents and letters attached in an Appendix to the MOTION TO QUASH and the 3 EXHIBITS A, B & C, discussed on pages 4, 5, 6 & 7 supra. He ignored completely the 4 times respondent referred him, at the June 20 hearing, to the considerable evidence previously presented, and acted and spoke as if it didn't exist.(58-70) See excerpts from June 20 transcript in Appendix herewith.. He ignored all 5 paragraphs of the Answer and all 9 AFFIRMATIVE DEFENSES therein set forth and the numerous decisions of the U.S.Supreme Court & other courts which deprived him of any jurisdiction to maintain such a lawless proceeding. His desperation to find a legitimate basis for the coveted disbarment drove him to the employment of a falsehood as his only resource. Nine times at the June 20 hearing he tried to entice the respondent into presenting evidence which was always declined because of his disqualification & lack of jurisdiction, or because of fully adequate evidence previously presented and available if he wanted to look at it.

The fiasco and voidness of his judgment of disbarment on June 20 was pointed out unmistakably in a motion on June 30 (195) to vacate and set aside the disbarment which offered 5 pages of points and arguments and 3 pages of case citations and quotations, all of which were again ignored and the motion denied without either hearing or comment on July 12 (208).

The giant falsehood thus employed by Judge Blumenfeld necessitated 3 motions by respondent, none of which have yet been acted upon or set for hearing. They are:

1. On July 12-MOTION FOR RETRACTION BY JUDGE BLUMENFELD - on the analogy of the retraction clause in State Statute 52-237 for mitigation of libel damage. (205)
2. On July 12-MOTION FOR REFORMATION OF FALSEHOOD--by other judges of same Court, including Timbers,Clarie & Zampano, as required by the oath taken by each person admitted to state practice. (204)

3.On July 31-MOTION FOR ACTION BY U.S.ATTORNEY as re

quired by CANON 29 of Professional Ethics which lays upon appellant the duty of bringing any instance of perjury to the knowledge of prosecuting authorities. Violation of his oath to "do no falsehood, nor consent to any to be done in court" constitutes perjury by Judge Blumenfeld. (210)

DISCIPLINARY PROCEEDINGS GREATLY NEEDED AGAINST COLES, KING, MURPHY, ALCORN, HOUSE AND RYAN

At this time when the 4 District Court Judges in the State of Connecticut appear to be so ethically minded, seems to be a most opportune time for them to show their colors on the subject by instituting DISCIPLINARY PROCEEDINGS against former Judge Albert L. Coles of Bridgeport who was the first counsel to put in an appearance for the 5 individual defendants King, Murphy, Alcorn, House and Ryan in CIVIL CASE No.11,551, which was in open violation of CANON 36 of Professional Ethics, declaring that "a lawyer should not accept employment as an advocate in any matter upon the merits of which he has previously acted in a judicial capacity." Furthermore extensive evidence has been in Judge Blumenfeld's hands ever since April 3,1967 of how Coles refused to honor the mandatory requirements of CANON 11 of Judicial Ethics to "correct unprofessional conduct of attorneys" and "if adverse comment is not a sufficient correction, should send the matter at once to the proper investigating and disciplinary authorities."His brazen breach of both of these CANONS makes it imperative that the 4 District Judges initiate proceedings immediately against Coles on both counts and including Justices, or former Justices, King, Murphy, Alcorn, House and Ryan who conspired with him to violate CANON 36 by engaging him as counsel for themselves in Action 11,551. Moreover said King and Murphy should be confronted with an Order to Show Cause why they violated CANON 11 as described on page 6 supra.The time for house-cleaning and fumigation has now arrived. God save the United States of America and the State of Connecticut.

Appellant has filed two other motions, which have not been acted upon or assigned for hearing, as follows:

June 30. (185) MOTION FOR DISCIPLINARY PROCEEDING against attorney Coles for breaches of CANONS 36 & 11.

Aug. 10. (Sup. 30-32) MOTION TO DISMISS FOR LACK OF JURISDICTION THE INSTANT PROCEEDING #11,798, in view of 2 newly discovered cases: Garrison v. Louisiana, 379 U.S.64 (1964); and New York Times Co. v. Sullivan, 376 U.S.254 (1964).

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QUESTIONS PRESENTED

I. Is the judgment of disbarment void for lack of jurisdiction ?

II. Has Judge Blumenfeld so conducted himself as to be disqualified to sit on this disciplinary proceeding, thus rendering the judgment void ?

III. Was it an abuse of discretion for Judge Blumenfeld to fabricate a falsehood upon which to base a judgment of disbarment ?

ARGUMENT

I. Is the judgment of disbarment void for lack of jurisdiction ?

Fortunately the U.S.Supreme Court in Garrison v. Louisiana, 379 U.S.64 on Nov.23,1964, spoke so clearly on subject matter almost identical to the instant case that the answer to this first question can be deduced from the facts and opinion set forth in that case. Fantastic as it may seem, even the number of judges forming the subject matter of the two cases is the same. District Attorney Garrison had a dispute with 8 Judges during which he held a press conference at which he issued a statement disparaging their judicial conduct. As a result he was tried without a jury before a judge

from another parish and convicted of criminal defamation under a State Statute and fined $1000. which was upheld by the State Supreme Court. Justice Brennan, speaking for the U.S.Supreme Court, said (p.65-66):

"The principal charges alleged to be defamatory were his attribution of a large backlog of pending criminal cases to the inefficiency, laziness, and excessive vacations of the judges and his accusation that by refusing to authorize disbursements to cover the expenses of undercover investigations of vice in New Orleans, the judges had hampered his efforts to enforce vice laws. In impugning their motives,he said:

(p.66) "The judges have now made it eloquently clear where their sympathies lie in regard to aggressive vice investigations by refusing to authorize use of the DA's funds to pay for the cost of closing down the Canal Street clip joints ** This raises interesting questions about the racketeer influences on our eight vacation-minded judges. *** (p.76) As the Louisiana Supreme Court viewed the statement, it constituted an attack upon the personal integrity of the Judges, rather than on official conduct. ** that*the use of the words 'racketeer influences' when applied to anyone suggest and imputes that he has been influenced to practice fraud, deceit, trickery, cheating, and dishonesty; that the expression that the judges have enjoyed 300 days vacation out of 19 months suggests and connotes a violation of the 'Deadhead' statute ** Public Payroll Fraud; that 'Other expressions set out in the Bill of Information connote malfeasance in office. ** The expressions charged contain personal attacks upon the integrity and honesty of the 8 judges. ** The accusation concerned the judges' conduct of the business of the Criminal District Court. (p.77) Of course, any criticism of the manner in which a public official performs his duties will tend to affect his private as well as his public reputation. The New York Times rule is not rendered inapplicable merely because an official's private reputation, as well as his public reputation is harmed. The public-official rule protects the paramount pub-

lic interest in a free flow of information to the people concerning public officials, their servants. To this end anything which might touch on an official's fitness for office is relevant. Few personal attributes are more germane to firness for office than dishonesty, malfeasance, or improper motivation, even though these characteristics may also affect the official's private character."***

(p.77) "Applying the principles of the New York Times case, we hold that the Louisiana statute, as authoritatively interpreted by the Supreme Court of Louisiana, incorporates constitutionally invalid standards in the context of criticism of the official conduct of public officials. (p.78) For contrary to the New York Times rule, which absolutely prohibits punishment of truthful criticism, the statute directs punishment for true statements made with "actual malice" ** And "actual malice" is defined in the decisions below to mean hatred, ill will or enmity or a wanton desire to injure. ** The statute is also unconstitutional as interpreted to cover false statements against public officials. The New York Times standard forbids the punishment of false statements unless made with knowledge of their falsity or in reckless disregard of whether they are true or false.** (p.79) The test which we laid down in New York Times is not keyed to ordinary care; defeasance of the privilege is conditioned, not on mere negligence, but on reckless disregard for the truth. REVERSED."

The case so frequently referred to in the above quotation is N.Y.Times v.Sullivan,376 U.S.254-305, decided March 9,1964, in which a half million libel judgment was reversed by the Supreme Court which held that a state cannot under the 1st & 14th Amendments award damages to a public official for defamatory falsehood relating to his official conduct unless he proves"actual malice"- that the statement was made with knowledge of its falsity or with reckless disregard of whether it was true or false. Justice Brennan for the Court said:

(p.272) "Injury to official reputation affords no

"more warrant for repressing speech that would otherwise be free than does factual error. Where judicial officers are involved this court has held that concern for the dignity and reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge or his decision. Bridges v. California, 314 U.S. 252. This is true even though the utterance contains "half-truths" and "misrepresentation." (Citation) Such repression can be justified, if at all, only by a clear and present danger of the obstruction of justice. (2 citations) If judges are to be treated as "men of fortitude, able to thrive in a hardy climate (1 citation), surely the same must be true of other government officials, such as elected city commissioners. Criticism of their official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes their official reputations."

These two U.S. Supreme Court decisions were made and published some 2 or 3 years before February 1967 when disbarment proceedings were instituted against the appellant. In view of the nation-wide notoriety & publicity attending both cases reversing state judgments held to be in violation of the FIRST AMENDMENT rights to freedom of speech and of the press, and in view of the conceded sincerity of the appellant and the absence of any sign or degree of malice or disregard for the truth, recklessly on his part (p.3, 2d par.), all four judges should have known that they were totally without jurisdiction to initiate such proceedings. The reasoning of the Court in Phelan v. Bradbury Corp., 7 F.R.D. 429, 431 (1947 D.C.) helps to clarify this jurisdictional point. In the Phelan case two U.S. Supreme Court decisions rendered subsequent to a District Court decision on the same point were held to make the latter voidable; but if the 2 Supreme Court decisions had preceded District Court action, the latter would have been void for lack of jurisdiction, because it would have had no power to act contrary to Supreme Court rulings.

This same Constitutional violation of appellant's 1st Amendment right to freedom of speech was set up

by him in his answer on June 12 as his FIRST AFFIRMATIVE DEFENSE (177) and was again incorporated in par.4 (d) of his June 30 affirmation in support of motion to vacate disbarment judgment (199) as follows:

> "Respondent's constitutional right to freedom of speech under the FIRST AMENDMENT cannot be violated by disbarment or the slightest disciplinary action of this court, particularly when no base or unworthy motives are involved, no intimidation, no indecent language, no moral turpitude, fraud or dishonesty, no deceit, betrayal, bad faith, no excessive fees or malicious conduct - nothing but a respectful statement of overt acts. For two clean-cut cases on this subject, see FIRST DEFENSE and quotations from the cases in par.2 of FIFTH DEFENSE. (See also Citation 9 & par.2 of 3rd DEFENSE."

These various citations are as follows:
Re Hart, 104 Minn.88 (1908), 17 L.R.A.(N.S.) 585,591
State ex rel.v.Circuit Court, 97 Wis.1,12;72 N.W.193
Ex Parte McLeod (D.C.) 120 Fed.130,136
Ex Parte Steinman, 95 Pa.220. Re Pryor, 18 Kan.72,76
Austin's Case, 5 Rawle (Pa.) 205
Patterson v.Colorado, 205 U.S.454,463, where court said:

> "When a case is finished courts are subject to the same criticism as other people." Following quote from Harlan dissent: "The public welfare cannot override constitutional privileges, and if the rights of free speech and of a free press are, in their essence, attributes of national citizenship, as I think they are, then neither Congress nor any State since the adoption of the 14th Amendment, can by legislative enactments or by judicial action impair or abridge them. In my judgment the action of the court below was in violation of the rights of free speech and a free press as guaranteed by the Constitution."

Under the Garrison and New York Times decisions, Judges Timbers and Blumenfeld had no power to initiate disciplinary proceedings against appellant unless they could prove both the falsity of the charges against

the 8 judges and the reckless disregard of the truth by the appellant. They couldn't and didn't prove either. No such burden of proof rested upon the appellant, but he voluntarily presented 38 pages of documents and 3 EXHIBITS aggregating 160 pages, or 198 pages total, which were analyzed in his Third Defense and on pages 4, 5, and 6 supra to provide proof of the truth as to the 8 judges which was called in question. The absence of malice and the lack of abusive or other improper conduct of appellant toward the 8 state judges being conceded in the last paragraph of the original MEMO filed by the U.S.Attorney (81) leaves the District Court without jurisdiction either to initiate or pursue this proceeding.

OTHER CONSIDERATIONS VERIFYING LACK OF JURISDICTION

The complete IMMUNITY of appellant from harassment for words written or spoken in the ordinary course of any proceeding before any court or tribunal recognized by law should have blocked this proceeding long before it was ever filed, and is a complete bar to any adverse judgment of disbarment such as that of June 20,1967. See Spalding v.Vilas, 161 U.S.483,497 (1896) where Justice Harlan said:

> "The authorities, it was said, are clear, uniform & conclusive, that no action of libel or slander lies , whether against judges, counsel, witnesses or parties for words written or spoken in the ordinary course of any proceeding before any court or tribunal recognized by law."

Every word written or spoken by the appellant in said Complaint #11,551 was pronounced in the ordinary course of his duty to his clients, imposed upon him by CANONS 29 & 15 of Professional Ethics and exempts him from all past, present and future harassment, defamation and prosecution at the hands of the federal district court or any other tribunal. He did not exceed his duty in any particular. It was the illegal seizure of a jurisdiction they knew they did not possess by the full bench of the State Supreme Court twice in succession which provided the bottle-neck effectively blocking

and evading the plaintiffs' constitutional rights and rendering effective all of the misdeeds of the other defendants, which was the outstanding overt act in the entire history of the case, and under CANON 15 could not have been omitted by the appellant. See SECOND DEFENSE (177) · How far a member of the bar is entitled to go in comment upon such an extraordinary state of affairs involving judges is well expressed by the opinion in Thatcher v.U.S.,212 Fed.801 (1914):

"We cannot think that a lawyer citizen's criticism of such a candidate must needs be confined to what is 'decent and respectful.' His criticism may be as indecent and disrespectful as the facts justify.** When expressions of opinion, they are permitted,if in good faith; and where statements of fact,they may be made,if true,or in good faith and with reasonable cause believed to be true, but they are forbidden if the derogatory fact allegations are false,and are by the utterer known, or with ordinary care should be known to be false."

And in Bauers v.Heisel,361 Fed.2d 581,591 (C.A.3,1966) · the court deprives judges of immunity who act outside their jurisdiction, and said:

"The clear-absence versus mere-excess-of jurisdiction distinction has,in substance,been adopted and applied in Civil Rights Act cases brought against judges and other judicial officers.(4 citations) Because immunity is conferred on an individual solely by virtue of the office he holds, reason requires us to adopt a rule which does not provide immunity for those acts which are done clearly outside the authority or jurisdiction of the office."

The lack of jurisdiction in the federal courts to impose sanctions on counsel who are fearless and vigorous in performance of duty is reflected by Justice Jackson's comment in the disbarment case of Sacher v.U.S., 343 U.S.1 (1952) at pages 13-14:

"But that there may be no misunderstanding,we make clear that this Court,if its aid be needed,will unhesitatingly protect counsel in fearless,vigorous & effective performance of every duty pertaining tothe

office of the advocate on behalf of any person whatsoever."

II. HAS JUDGE BLUMENFELD SO CONDUCTED HIMSELF AS TO BE DISQUALIFIED TO SIT ON THIS CASE, THUS RENDERING HIS JUDGMENT VOID ?

The facts of his conduct are substantially covered supra on pages 6, 7, 8 & 9. Judge Blumenfeld had already exhibited strange behavior for an impartial judge by completely ignoring, in his April 24th denial of the MOTION TO QUASH, the 38 pages of documents and letters which he had voluntarily admitted as evidence at the hearing on April 3rd. He likewise ignored all 3 EXHIBITS, A, B & C, which he had admitted, except that he did refer to "B" for the useless purpose of pinning on respondent the disclosure of Albert L. Coles as the anonymous judge mentioned in par.20 as having aided and abetted attempted subornation of perjury, not realizing that the U.S.Attorney had torn the cloak of anonymity from Coles in his MEMO. And to top it all he completely ignored his mandatory duty under Rule 12 (b) to treat the Quash motion as one for summary judgment. In addition, in "I", he actually altered the allegations and claims of the Complaint as to the 7 judges acting without jurisdiction so as to make it appear they were merely being accused of ruling contrary to the plaintiffs' contentions, which was nothing more or less than plain falsehood, which gave him a chance to declare "There is no respectability or reason to that argument." Of course not, that wasn't the argument!

Under his heading "II" he kept harping on allegations of so-called "criminal conspiracy" in the complaint, as if that was an important point of great consequence. In view of the Thatcher case on the preceding page and the Garrison & New York Times cases, and the citations supra on page 15, the point has no bearing on a decision. It is a matter of complete indifference as to whether a criminal conspiracy is alleged or not. The truth or falsity of the overt act is of some importance, but even complete falsity is not conclusive in the absence of malice or reckless disregard of the

truth, and we have already seen that absence of malice is conceded in the last paragraph of the U.S.Attorney's MEMO. However, it has already been shown supra at the bottom of page 2 and top of page 3 that it is the overt acts of the 8 state judges which are recited in Complaint #11,551,and in no instance is the word "criminal"applied to them. But in par. 2-B,12th line & par.18,last line the conspiracy was designated as a civil one. And the construction and meaning of the writer is regarded as controlling in the following two state cases:

Ex parte Biggs, 64 N.C.214 (1870) where Court said:

"An attorney had published in respect to a charge to a grand jury that it was 'almost identically similar with the one delivered here 6 months since,with this important exception: His Honor seems to have somewhat deserted the profane poetical masters and confined most of his quotations to the Holy Scriptures,a happy omen, if it is possible to believe anything happy in such a character.' The attorney was disbarred by the lower court, but upon appeal Pearson, Ch.J. said"The proceeding is one of a peculiar nature, of necessity. The court is to some extent a judge in its own case; hence when the respondent submits to 'try himself' & a disavowal is made on oath, the court accepts it, & is not allowed to call in question the truth or sincerity of the disavowal.' The respondent having disavowed any criminal intention, the rule to show cause was discharged."

In re Wooley, 11 Bush (Ky.) 111 (1875) The court said:

"We recognize to the utmost reasonable limit of its application the rule that a supposed contempt consisting in mere words which are apparently intended to be scandalous and offensive, but which are at all susceptible of a different construction, may be explained or construed by the speaker or writer,and that upon his sworn disavowal of an intention to commit a contempt, proceedings against him must at once be discontinued. But this rule does not control where the matter spoken or written is of itself necessarily offensive and insulting."

The rest of Judge Blumenthal's ruling on April

24th is so completely answered by the Garrison case in 379 U.S.64, that there is no need to waste more time on it. His denial on May 17th (163) of an extension of time to plead or answer by belittleing the need of library research which is so essential in a novel proceeding of this sort, and his threat to treat as an admission of guilt any delay in answer beyond 5 days, is further evidence of a distorted view of the administration of justice and intelligent preparation to meet on a high plane outrageous charges which have no basis nor any law to support them. His unexpected denial of the motion for a more definite statement to overcome the vagueness and ambiguity of pars. 2 & 3 of the Order to show cause, encountered venom and sarcasm openly used without valid reason or semblance of fairness.

His RULING of May 31st (174) on the motion for summary judgment kicks over the traces of orderly procedure completely when he states "No more'motions'will be ruled upon in open defiance of a U.S.Supreme Court decision in Holt v.Virginia,381 U.S.131,136-137(1965) which had been on his desk since March 20 on page 10 of the Motion to Quash and appears also on page 7 supra This was the climax and sealed his disqualification as an impartial judge in this case. If any court could possibly doubt his disqualification after this defiance of the Supreme Court rulings as to due process, his fabrication of a mammoth falsehood in his judgment of disbarment on June 20 should suffice to seal his disqualification forever in the eyes of any court so far as the appellant and his 3 plaintiff clients are concerned. That renders his judgment null and void by universal law. And it will be noticed from a perusal of the excerpts printed in the Appendix herewith of the hearing on June 20 that appellant did not waive his constitutional right to an impartial judge in any manner at the hearing, but stood on his rights and asserted them repeatedly despite the harassment of the Judge.

III. WAS IT AN ABUSE OF DISCRETION FOR JUDGE BLUMENFELD TO FABRICATE A FALSEHOOD UPON WHICH TO BASE A JUDGMENT OF DISBARMENT ?

The circumstances and facts attending this fabrication of a falsehood are related in the foregoing pages 4 to 8. The opinion itself is in the Appendix. The answer to this THIRD QUESTION is one peculiarly within the province of this Court. It is not fitting for the appellant even to attempt an answer. Proof of the fabrication is now before this Court. Citation of authorities is out of place. None are offered.

C O N C L U S I O N

Upon the reasoning and authorities cited in the preceding pages, it is respectfully submitted that the judgment of disbarment pronounced by the District Court be reversed and vacated, and that it be declared null and void for lack of jurisdiction as well as for the abuse of discretion and the disqualification of Judge Blumenfeld to act as an impartial judge in this proceeding; and for the violation of appellant's constitutional rights to freedom of speech and to due process.

Respectfully submitted,

Loring J. Whiteside

Dated: October 11, 1967
Woodbridge, Connecticut

Loring J. Whiteside
Appellant, pro se,
South Pease Road, Woodbridge,
Connecticut 06525

In re Loring J. Whiteside Civil Case #11,798

EXCERPTS FROM 7-page TRANSCRIPT OF HEARING ON OCTOBER 30,1967 BEFORE JUDGE BLUMENFELD ON MOTION TO VACATE APPROVAL OF SUPERSEDEAS BOND FURNISHED BY RESPONDENT ON JULY 20,1967

U.S.Attorney , Jon O.Newman, for the Government.

(p.2) MR.NEWMAN: This is the Government's motion,your Honor, not the Government formally, but my motion in the matter of Loring J. Whiteside,Civil No.11,798. ****

(p.4) THE COURT: Do you wish to be heard,Mr.Whiteside?

MR.WHITESIDE: I do not, your Honor.

THE COURT: Well, alright. Then I will rule on this motion. ***** (p.5) I had previously indicated that the Rules of Civil Procedure have no applicability to disbarment proceedings, so that the bond provided here insofar as it refers to the rules would be a nullity to effect a stay. **** Accordingly, I rule that the bond filed on July 20,1967 does not operate under the rules to effect a stay of the Court's order.*** (p.6) That is the only matter scheduled for ten o'clock this morning.

MR.WHITESIDE: If your Honor please, there was a motion filed in the clerk's office this morning for your disqualification. Has that been given to you yet ?

THE COURT: Well, it may have come in the mail, Mr.Whiteside, but it is not on the calendar for today.

MR.WHITESIDE: No. I filed it just a few minutes ago before the court opened and asked the clerk to see that you got a copy. I gave a copy to Mr.Newman.

THE COURT: Suppose it had. You filed a motion for disqualification, is that right ?

MR.Whiteside: I did, your Honor.

THE COURT: I regard it as frivolous and deny it.

MR.WHITESIDE: Have you read it, your Honor ?

THE COURT: Yes, I read it.

MR.WHITESIDE: Oh. All right.

I hereby certify that the foregoing is a true and correct transcript of the original notes as recorded by me before the Honorable M. Joseph Blumenfeld, U.S.D.J. on Monday, October 30,1967. (Signed) Benjamin R.Sanders

Official Reporter

UNITED STATES COURT OF APPEALS - FOR THE 2nd CIRCUIT
In re LORING J. WHITESIDE Docket No. 31,654

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UNITED STATES DISTRICT COURT - DISTRICT OF CONNECTICUT
In re LORING J. WHITESIDE CIVIL NO.11,798.
RULING ON PETITION TO QUASH - JUDGE M.J. BLUMENFELD
April 24, 1967

Pursuant to an order of the Chief Judge of this district, a petition for appropriate disciplinary proceedings against the respondent was filed by the United States Attorney for the District of Connecticut based upon allegations made by respondent in pleadings filed by him in this court in a civil suit.(1) Respondent has filed a motion to quash the resulting order to show cause why he should not be disciplined.

Since the entire basis of the petition for disciplinary action against the respondent is a complaint filed by him in this court, which alleges criminal conduct by several state court judges, his motion to quash these proceedings and the arguments he made in support of it were primarily directed to an attempt to show that the complaint did not accuse several judges of criminal activities in the course of their official duties.

The allegations in paragraph 11 of that complaint that "certain Superior Court Judges, certain State Supreme Court Justices and one certain probate judge entered into the conspiracy to conceal the murder and perform overt actions of their own..." should be read

---

Note (1) Tkaczyk v. Gallagher, Civil No.11551, filed Aug.5, dismissed, 259 F. Supp. 584 (D.Conn.1966), appeal dismissed from bench by Second Circuit Court of Appeals, Sept.19,1966. The prelude to this litigation has burdened the Connecticut state courts repeatedly, e.g. Tkaczyk v. Levine, Civil No.97790 (Superior Court, New Haven County) appeal dismissed, 151 Conn.728,197 A 2d 942(1963), cert denied, 35 USL Week 3366 (U.S. Apr. 18, 1967 (Misc.No.1372); 151 Conn. 732(1963) 733, 734, 197 A 2d 943(1964), and also the Supreme Court. (By Mr. Justice Harlan, application for stay denied, Dec. 13, 1963; reapplication for stay denied, Feb.4,1964; application for stay denied, Aug.12,1966.)

with the allegation in paragraph 3 that "the 22 defendants (including the judges referred to in paragraph 11) conspired and agreed together, each in his own particular field and time for action... to defraud and deceive the plaintiffs and to conceal and suppress the true cause of ... the sudden and untimely death of 45 year old Olga Gallagher. Said conspiracy sought to prevent public disclosure and thorough investigation of the circumstances attending her death, which ... indicate a premeditated murder ..." (Emphasis added).

I

To escape the effect of the clear charge in the emphasized portion above that the judges acted in the course of their official duties, the respondent argues that the judges had, by their behavior, forfeited their positions as judges. The judges did not become any the less judges because they ruled on matters presented to them contrary to the contentions of the respondent's clients. There is no respectability or reason to that argument. See, e.g., Garfield vs. Palmieri, 193 F. Supp.137, 142 (S.D.N.Y. 1961), aff'd 297 F.2d 526 (2d Cir.), cert.denied, 369 U.S. 871 (1962).

II

Not content with charging that the action of each of the judges in ruling against the respondent's clients prevented disclosure of premeditated murder, the respondent alleged that they "conspired and agreed together" to do so. He argues that since these allegations were made in a civil suit (2) their "conspiracy" should be understood only in that sense.

Note (2).But it cannot legally be read in that sense because "there is no such thing as a civil action for conspiracy." Cole v. Associated Constr.Co., 141 Conn. 49, 54, 103 A.2d 529, 532(1954). An allegation of "conspiracy" is only surplusage in a civil action. Koblitz v. Baltimore & Ohio R.R., 154 F.Supp.367, 371 (S.D.N.Y. 1958), aff'd 266 F.2d 320 (2d Cir.), cert. den,361 U.S.830(1959).

There is no need to elaborate upon the meaning of a conspiracy in the criminal law. Whether the allegation of "conspiracy" was merely an ambiguity used only to express a blend of civil and criminal meanings in the complaint presents a subtlety too elusive, even for persons skilled in linguistic interpretation. Giving it the most favorable reading for the respondent, the suggestion that the judges were parties to a criminal conspiracy is obvious. Read as a lawyer or judge would read it, it charges a crime. Whether the respondent so meant it, may have a bearing on the measure of discipline - if any - which may be imposed after this petition has been heard on the merits.

III

There is no ambiguity whatsoever in the charge in paragraph 20 that a Superior Court judge aided and abetted a named attorney "in attempted subornation of perjury and an attempt to extort a ransom under false pretenses.". There can be no doubt that this is a charge of criminal conduct sharply presented in black and white terms. The charge is amplified in detail through the incorporation by reference of a transcript of a state court hearing on a motion for equitable relief. That transcript - introduced as Exhibit B by the respondent at the hearing on the present motion - unmistakeably identifies the judge referred to.

While identification of judges may be relevant in order to support a possible claim by one of them for damages based on published material libelous per se, cf. Hope v. Hearst, 294 F.2d 681 (2d Cir. 1961), cert.denied, 368 U.S. 956(1962), what matters even more in this proceeding is that the invidious conduct charged to one of them is, at the same time, ascribed to the judicial office he occupied in the state court system.

The Preamble to the Canons of Professional Ethics, Connecticut Practice Book (1963), begins:

"In America, where the stability of courts and of all departments of government rests upon the appro-

> val of the people, it is peculiarly essential that the system for establishing and dispensing justice be developed...and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration."

And the very first canon, entitled The Duty of the Lawyer to the Courts, begins:

> "It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance."

In other words, the allegation that the judicial office was criminally administered is as impermissible by one bound by the "canons" as an allegation against the character of one who happens to be a judge.

IV

Finally, the respondent claims that the canons which he is accused of violating are not "prescribed or adopted" by this court and accordingly cannot be used as a basis for disciplinary proceeding. This claim ignores reality. Rule 2 of the Rules of this court explicitly "recognize the authority of the 'Canons of Professional Ethics' of the American Bar Association." He argues that recognition and adoption are separate and distinct acts. The incorporation of its recognition of the authority of those "Canons of Professional Ethics" into the very same rule of this court under which the respondent was admitted to practice before it validly binds the respondent to conform his conduct to those "canons." Nor is his argument that nothing mattered except noble intentions vis-a-vis his clients a valid ground for dismissing the petition.

The motion to dismiss the petition is denied.

SO ORDERED.

Dated at Hartford, Connecticut, this 24th day of April, 1967.

M. Joseph Blumenfeld
United States District Judge

****

RULING ON MOTION FOR EXTENSION OF TIME
JUDGE M. J. BLUMENFELD - May 17, 1967

The respondent moves for an extension of time within which to file his answer to the Petition for Disciplinary Proceedings filed in this court on February 1, 1967, and served on him under an Order to Show Cause issued the same day. On March 20, 1967, well after the time to plead or answer, the respondent filed a Motion to Quash which the court entertained. On April 24, 1967, after hearing, the Motion to Quash was denied.

The respondent was ordered to file a written answer to the specific allegations in the Order not later than February 20, 1967. He may deny any of the facts set forth in the Order or allege any other material facts. Research in the law libraries is not a necessary prelude to that. Unless an answer shall be filed within five (5) days the factual allegations in the Order to Show Cause will be taken as admitted by the respondent. SO ORDERED.

Dated at Hartford, Connecticut, this 17th day of May, 1967.

M. Joseph Blumenfeld
United States District Judge

****

RULING ON MOTION FOR A MORE DEFINITE STATEMENT
JUDGE M. J. BLUMENFELD - May 17, 1967

The respondent moves for an order directing the United States Attorney to file a more definite state-

ment representing "(t)hat paragraphs 2 and 3 of the Order to Show Cause are so vague and ambiguous that it is impossible for the respondent to frame a responsive pleading without a more definite statement of the exact wording in Complaint #11551 upon which the U.S. Attorney relies and to which respondent must answer, and against which he must defend."

Paragraph 2 says:

> "That said complaint (filed by the respondent in this court in Tkaczyk v. Gallagher, Civil No.11551, as counsel for plaintiffs therein) alleged criminal conduct on the part of several named and unnamed judges of the State Courts of Connecticut."

It cannot be denied that many words were used in the complaint; many incidents were described. But the terms in which he couched the claims of his clients were his own. This is not for him an exploration of hitherto unknown territory.

The Order to Show Cause was issued by Chief Judge William H. Timbers, not by the United States Attorney.

The complaint, No.11551, filed in this court was drafted by the respondent; yet he, as its ancestor, now represents that he ought not be held to understand what he himself wrote. It is not for the United States Attorney to give meaning to the allegations in that complaint. He is not required to recast it in a phrase-by-phrase, or sentence-by sentence, rendering - which might convey a more concise meaning; but at the risk of marring the artistry of the original. The motion for a more specific statement is denied.

Dated at Hartford, Connecticut, this 17th day of May, 1967.

M. Joseph Blumenfeld
United States District Judge

****

RULING ON "MOTION FOR RULING AS TO SUMMARY JUDGMENT" AND "MOTION FOR INSPECTION OF TRANSCRIPT AT RESPONDENT'S OFFICE."

JUDGE M. J. BLUMENFELD - May 31, 1967

These disciplinary proceedings against Loring J. Whiteside were commenced by an Order to Show Cause issued on February 1, 1967. Since that time the respondent has filed multifarious papers and motions. Out of courtesy to the respondent and to assure beyond peradventure of any doubt that he would receive full and complete due process protection, the court has given consideration to these "motions." On April 27th, the court entered a written ruling on his Motion to Quash, On May 17th, another written ruling was entered on his Motion for a More Definite Statement, and on the same day another ruling was entered on his Motion for an Extension of Time. That last ruling ordered him to file an answer within five days. Instead, on May 22nd, he filed (1) a two page Motion for Enlargement of time to File Responsive Pleading; (2) a five page Motion for Ruling as to Summary Judgment; and (3) another Motion for Inspection of Transcript in the court's file at his own office. It now appears that the respondent would carry on this pleading game interminably.

It is perfectly clear that his so-called "Motion for Summary Judgment" was rejected. No further ruling is necessary. His Motion for permission to inspect the transcript at his own office is denied. It is availabld to him at the Clerk's office, as it is there to any one else.

The game has come to an end. No more "motions" will be ruled upon. This is not an adversary proceeding. The Federal Rules of Civil Procedure are not applicable to disbarment proceedings. Coughlan v. United States, 236 F.2d 927 (9th Cir.1956); Alaska Bar Ass'n. v. Dickerson, 240 F.Supp.732 (D.Alaska 1965).

A hearing on the Order to Show Cause will be heard on Tuesday, June 20, 1967, at 10:00 A.M. in the North

Courtroom, Federal Court, Hartford, Conn.

Dated at Hartford, Connecticut, this 31st day of May, 1967.

M. Joseph Blumenfeld
United States District Judge

****

OPINION OF JUDGE M. JOSEPH BLUMENFELD
ORDERING FINAL JUDGMENT OF DISBARMENT
Filed 3:40 P.M. - June 20, 1967

This matter came on for hearing before this court upon an order to show cause why Loring J. Whiteside should not be disbarred, suspended from practice or otherwise disciplined by this court. The order to show cause was issued on February 1, 1967.

I

Mr. Whiteside filed several motions among which were a motion to quash, motion for extension of time to plead, a motion for a more definite statement and a motion for summary judgment. Some were heard, and all were ruled on.

Within these motions, and again in an "Answer and Counterclaim to Charges in Order to Show Cause" he asserted that he had drawn and filed the complaint in Tkaczyk et al v. Gallagher et als., Civil No.11,551, in this court claiming damages against all of the Justices of the Connecticut Supreme Court and several judges of other courts. It is clear, and Mr. Whiteside does not deny, that the only basis for the claim against them arose out of the conduct of those judges committed while acting within their judicial roles. His claim that they lost their status as judges because of the rulings they made was rejected in this court's Ruling on Motion to Quash filed April 24, 1967.

He has freely admitted that the only evidence he had of the accusations he made against several judges

was contained in the record of the proceedings before them. At the hearing today he stated that he had no evidence to offer in support of those charges except what has already been offered and which is in the record.

In the complaint in Civil No.11,551, reiterated in the written material he has filed at several stages during this proceeding, he unequivocally charged Judge Coles of the Connecticut Superior Court with "aiding and abetting DeAndrade in attempted subornation of perjury and an attempt to extort a ransom under false pretenses", and he also charged that "certain State Supreme Court Justices and one certain probate judge entered into the conspiracy to conceal (a) murder and perform overt acts of their own...to prevent public disclosure and thorough investigation of the circumstances, which...indicate (d) a premeditated murder..."

Mr. Whiteside has not demonstrated in any manner that he had any grounds or probable cause whatever for making such assertions. He presented no evidence or facts to support them. Those accusations are amply sufficient to demonstrate that Mr. Whiteside should not be a member of the Bar of this court. During these proceedings, he has failed to show cause why he should not be disbarred.

II

Yesterday, Mr. Whiteside filed a motion for my disqualification to sit on this matter,unsupported by any affidavit of bias or prejudice. When this gambit was employed against the other judges of the District Court of Connecticut, they withdrew from further participation in this proceeding. There is no reason why I should do so. The motion for disqualification of a judge is denied.

III

Another motion to dismiss for lack of jurisdiction was also filed yesterday. It is denied.

IV

Appended to Mr. Whiteside's Answer filed on June 12, 1967, is a "Counterclaim against Judges Timbers and Blumenfeld" based on the fact that this disciplinary proceeding was initiated against Mr. Whiteside. This is not an adversary proceeding in which a counterclaim may be made. The counterclaim should be stricken and it is so ordered.

V

Mr. Whiteside was admitted to practice law in the State of New York in 1913. He came to Connecticut in 1921. He practiced law in New York for about ten years, but he never practiced in Connecticut except to represent himself. He was never admitted to the Bar of Connecticut. When he sought admission to the Bar of this court in 1964, it was solely to bring and prosecute the case of Tkaczyk v. Gallagher. He does not maintain a law office in this state, other than his home. He never had, nor does he now have, any other clients. I have taken these facts into consideration.

IT IS ORDERED that Loring J. Whiteside be disbarred as a member of the Bar of this court, and that his name be hereby stricken from the roll of the attorneys who are authorized to practice in this court.

Dated at Hartford, Connecticut, this 20th day of June, 1967.

M. Joseph Blumenfeld
United States District Judge

****

DENIAL OF "MOTION TO VACATE AND SET ASIDE JUDGMENT OF DISBARMENT

Filed 11:15 A.M. July 13, 1967
JUDGE M. JOSEPH BLUMENFELD

The respondent's "Motion to Vacate and Set Aside Judgment of Disbarment" is denied.

Dated this 12th day of July, 1967

M. Joseph Blumenfeld
U.S.District Judge

PAPERS & DOCUMENTS OF WHICH 3 XEROX COPIES ARE BEING FURNISHED FOR COURT USE UNDER RULES 16 & 15 (b)

1. The 4 pages of DOCKET ENTRIES in CIVIL #11,798

2. The 11 page MOTION TO QUASH including 3 pages of case citations & quotations; to which is annexed the 38 page APPENDIX filed on March 20,1967,hearon which was held April 3,1967 before Judge Blumenfeld.

3. 12 motion papers & other documents filed in Case #11,798, with filing dates all in 1967 as follows:

Mch.15. Affidavits of bias of Judges Zampano,Clarie & Timbers. (9 pages)
Mch.27. Motion for enlargement of time. (3 pages)
Apr. 3. 4 page outline of respondent's case at hearing on MOTION TO QUASH.
May 22. MOTION FOR RULING AS TO SUMMARY JUDGMENT.(3p.)
May 22. Motion for enlargement of time. (2 pp.)
Jun.19. Motion for disqualification of Judge. (2 pp.)
Jun.19. Motion for dismissal of all charges for lack of jurisdiction. (2 pp.)
Jun.30. Motion to Vacate Judg. of Disbarment.(8 pp.)
Jun.30. Motion for Disciplinary Proceedings vs. atty. Albert L. Coles for violation of 2 CANONS of Ethics. (2 pp.)
Jul.12. Motion for Reformation of Falsehood.(1 p.)
Jul.31. Motion for Action by U.S.Atty.with respect to perjury. (1 p.)
Aug.10. Motion to extend time to file Record on Appeal & to Docket same, pending a ruling as to effect of Garrison & N.Y.Times cases on jurisdiction of this Court in this proceeding.(1 p.)

UNITED STATES DISTRICT COURT - DISTRICT OF CONNECTICUT
In re LORING J. WHITESIDE CIVIL NO. 11,798

ORDER TO SHOW CAUSE

This Court on September 12, 1966, pursuant to Rule 2(d) of the Rules of Civil Procedure of this Court, having directed the United States Attorney to conduct such investigation as he deemed necessary and appropriate to determine whether there had been a breach of professional conduct by Loring J. Whiteside, a member of the bar of this Court, as plaintiffs' counsel in a case pending in this Court entitled Tkaczyk v. Gallagher, Civil No. 11,551,* of such a character as to warrant disciplinary action by this Court; and

The United States Attorney, pursuant to said direction, having conducted such investigation and having submitted to the Court a petition that appropriate disciplinary proceedings against said Loring J. Whiteside be taken by the Court, and the United States Attorney having submitted to the Court a memorandum in support of said petition; and

The said petition and memorandum submitted by the United States Attorney (both of which are attached hereto and made part of this Order To Show Cause) having been considered by all of the judges of this Court; it is therefore

ORDERED that said Loring J. Whiteside appear, with counsel if he so desires, at an en banc hearing to be held by all of the judges of this Court on Monday, March 6, 1967, at 2:00 P.M., in the second floor courtroom of the United States Courthouse, New Haven, Connecticut, then and there to show cause why he should not be disbarred, suspended from practice or otherwise dis-

* Tkaczyk v. Gallagher, 259 F.Supp.584,587 (D.Conn. 1966), appeal dismissed by Court of Appeals, September 19, 1966.

ciplined by this Court for conduct in violation of Canons 1 and 32 of the Canons of Professional Ethics of the American Bar Association (Rule 2(f) of the Rules of Civil Procedure of this Court), specifically for the following conduct:

(1) That on August 5, 1966, Loring J. Whiteside filed a complaint in this Court in Tkaczyk v. Gallagher, Civil No. 11,551, as counsel for plaintiffs therein.

(2) That said complaint alleged criminal conduct on the part of several named and unnamed judges of the State Courts of Connecticut.

(3) That at the time he filed said complaint, Loring J. Whiteside had no knowledge of any facts bearing on the propriety or impropriety of the conduct of said judges of the State Courts of Connecticut other than the public record of the judicial actions said judges took or failed to take in connection with the case of Tkaczyk v. Gallagher in the State Courts of Connecticut.

(4) That the public record of the actions of said judges of the State Courts of Connecticut discloses actions taken by said judges in their official capacity which, even if erroneous, afford no basis for allegations of criminal conduct.

(5) The inclusion in the aforesaid complaint of allegations of criminal conduct on the part of judges of the State Courts of Connecticut constitutes gross disrespect of judges and judicial offices of the State of Connecticut, in violation of Canons 1 and 32 of the Canons of Professional Ethics of the American Bar Association.

and it is further

ORDERED that Loring J. Whiteside, personally or by counsel, serve on the United States Attorney and file with this Court, not later than Monday, February 20, 1967, a written answer to the specific allegations set forth above in paragraphs (1) through (5); and it is further

ORDERED that the original of this Order To Show Cause, together with the attached petition and memorandum of the United States Attorney, be filed with the

Clerk of this Court; and it is further

ORDERED that a copy of this Order To Show Cause, together with copies of the attached petition and memorandum of the United States Attorney, be served forthwith by the United States Marshal upon Loring J. Whiteside.

Dated at New Haven, Connecticut, this 1st day of February, 1967.

William H. Timbers
William H. Timbers
Chief Judge

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UNITED STATES DISTRICT COURT - DISTRICT OF CONNECTICUT
In re LORING J. WHITESIDE

PETITION FOR DISCIPLINARY PROCEEDINGS

Jon O. Newman, United States Attorney for the District of Connecticut hereby petitions that the United States District Court for the District of Connecticut to conduct appropriate disciplinary proceedings against Loring J. Whiteside, a member of the bar of this Court, for conduct in violation of Canons 1 and 32 of the Canons of Professional Ethics, specifically, the inclusion, in a complaint filed by Loring J. Whiteside in Tkaczyk v. Gallagher, Civil No.11,551, of allegations displaying gross disrespect for judges of the courts of the State of Connecticut.

Jon O. Newman
Jon O. Newman
United States Attorney

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MEMORANDUM IN SUPPORT OF PETITION
FOR DISCIPLINARY PROCEEDINGS

1. On September 16, 1966, by order of Chief Judge

William H. Timbers I was directed pursuant to Rule 2 (d) of the Local Rules of the District Court, to conduct such investigation as I deem necessary and appropriate to determine whether there has been a breach of professional conduct by Loring J. Whiteside in the case of Tkaczyk v. Gallagher, Civil No. 11,551, of such a character and nature as to warrant disciplinary action by this Court.

2. Rule 2(d) imposes upon the United States Attorney the duty to "conduct such investigations as to the professional conduct of members of the bar as the court shall direct" and further provides: "If as a result of such investigations the United States Attorney shall be of the opinion that there has been a breach of professional ethics by a member of this bar, it shall be his duty as an officer of the court having special responsibilities for the administration of justice to file and prosecute a petition that the alleged offender be subjected to appropriate discipline."

3. Loring J. Whiteside was admitted to the bar of this Court on February 17, 1964. His application was in proper form, accompanied by two affidavits of members of the bar of this Court. Mr. Whiteside received his law degree from Harvard Law School in 1911 and practiced law in New York City and White Plains, New York from 1911 to 1921. He moved to Connecticut in 1921 and from that time until 1964 he did not practice law with the exceptions of (a) some minor matters affecting his own company which arose shortly after he moved to Connecticut, and (b) matters relating to a case in which he was defendant in 1959. In 1913 he was admitted to the bars of the State of New York, the United States District Court for the Southern District of New York, and the United States Court of Appeals for the Second Circuit.

4. In 1959 Mr. Whiteside was prosecuted for criminal libel in the Court of Common Pleas for New Haven County. He was acquitted on 19 counts, found guilty on 4 counts, and sentenced to 20 days in jail and a fine

of $500. He was also sentenced to 5 days in jail for contempt of court occurring during the trial of the criminal libel case.

5. Apart from the above conviction and Mr. Whiteside's conduct in connection with Tkaczyk v. Gallagher, hereinafter set forth, nothing has come to my attention reflecting adversely on Mr. Whiteside's professional conduct.

6. The events leading up to Mr. Whiteside's appearance in Tkaczyk v. Gallagher began in May, 1962. Mrs. Julia Cravens had been referred to Mr. Whiteside as someone who might be willing to publish articles concerning litigation in which she and Mr. and Mrs. Sampson Tkaczyk, her mother and father, were then involved in the state courts of Connecticut. At that time the Tkaczyk family was represented by counsel. Mr. Whiteside explained to Mrs. Cravens that he could not represent the family as he was not a member of the bar of the State of Connecticut. However, he did offer to be of assistance in ascertaining facts. Thereafter, counsel withdrew. At this point Mr. Whiteside again advised Mrs. Cravens that he could not represent the family, but did offer to volunteer suggestions as to what he would do in their place, on the understanding that they would do as they wish and not consider him as their attorney. On this understanding, he did make some suggestions to them concerning their state court litigation and dictated some documents for their use.

7. Mr. Whiteside's formal representation of Mrs. Cravens and her family began in 1964, when a decision was reached to commence an action in the United District Court. Mr. Whiteside became a member of the bar of this Court so that he would be eligible to represent the family in this action.

8. On August 5, 1966, Mr. Whiteside filed a 12-page complaint in this Court in Civil Action 11551, Tkaczyk v. Gallagher. Plaintiffs were Mrs. Cravens and her parents, Mr. and Mrs. Tkaczyk. The twenty-two

defendants included lawyers, local police, a state's attorney, a deputy coroner, the clerk of the State Supreme Court of Errors, two judges of the State Superior Court, and all five judges of the State Supreme Court of Errors. This suit sought to plead in Paragraph 2 of the complaint a denial of civil rights, specifically the "right" of Olga Gallagher, the deceased daughter of Mr. and Mrs. Tkaczyk and sister of Mrs. Cravens, to underground burial in accordance with her religious precepts. This right was alleged to be in danger of infringement by Mr. Gallagher, the deceased's husband, who intended to have the body cremated.

9. The complaint also sought to plead in paragraphs 3-21 a conspiracy on the part of all twenty-two named defendants to conceal what was alleged to be the cause of Olga Gallagher's death, murder by her husband. Paragraph 3 read as follows:

> On or about December 5, 1961, and continuing without interruption up to the present moment, the 22 defendants conspired and agreed together, each in his own particular field and time for action, and with other persons whose names are unknown to plaintiffs, to defraud and deceive the plaintiffs and to conceal and suppress the true cause of, and the facts which for 2½ years had been leading up to, the sudden and untimely death of 45 year old Olga Gallagher. Said conspiracy sought to prevent public disclosure and thorough investigation of the circumstances attending her death, which in the privately expressed opinion of the deputy coroner, the defendant Sachs, and a proper appraisal of the events preceding and following the death, indicate a premeditated murder of the deceased by her husband, the defendant Gallagher.

Paragraphs 4-21 of the complaint allege various actions on the part of each of the twenty-two defendants, all alleged to have been taken in furtherance of the conspiracy alleged in paragraph 3.

10. Paragraphs 11, 20 and 21 allege conduct on the part of seven named state court judges and several unnamed judges, which allegations form the crux of this report. The judges are accused of acting in pursuance of the alleged conspiracy. Paragraph 11 makes this claim explicit by alleging that the judges "entered into the conspiracy to conceal the murder. . ." All of the conduct alleged to be conspiratorial is the taking of judicial action: rendering decisions in the course of the state court litigation or failing to render decisions to which Mr. Whiteside's clients believed they were entitled. The complaint goes far beyond the claim that state judicial action was erroneous and that the state court judges exceeded their jurisdiction; it specifically accuses them of criminal conduct.

11. Mr. Whiteside freely consented to being questioned by me concerning all aspects of his representation of Mr. and Mrs. Tkaczyk and Mrs. Cravens. He was specifically asked whether his allegations concerning the state court judges were based on any information in his possession other than the public record of what these judges said or wrote in the course of dealing with litigation before their respective courts. He replied that he had no such other information, and that his allegations were based entirely on the public record of the judges' actions. He expressed the conclusion that the judges must have been culpable because no other explanation was possible in view of the evidence before them at the time of their several rulings.

12. Mr. Whiteside's characterization of allegedly erroneous judicial action as criminal is illustrated by a single reference in paragraph 20: ". . . the transcript disclosed a Superior Court judge aiding and abetting DeAndrade in attempted subornation of perjury and an attempt to extort a ransom under false pretenses."

Mr. Whiteside stated to me that his sole basis for charging this particular Superior Court judge with aiding and abetting the commission of crimes was the action and statements of the judge as set forth in a

transcript of a hearing held on October 25, 1963.

This hearing was held by then Superior Court Judge Albert L. Coles on a motion filed pro se by Mr. and Mrs. Tkaczyk seeking to have Walter A. DeAndrade, attorney for Olga Gallagher's husband, enjoined from taking various actions in connection with the state court litigation and also disciplined with respect to certain alleged unprofessional conduct. The motion papers indicate that the allegations against DeAndrade are based on DeAndrade's offer, at a previous stage of the state court litigation, to settle the case by agreeing to underground burial if Mr. and Mrs. Tkaczyk would pay the burial expenses and state on the record that their previous claims and allegations were untrue. Judge Coles denied the relief sought solely on the ground that it would be improper to take any action with respect to matters that were then the subject of a pending appeal before the State Supreme Court of Errors.

Mr. Whiteside's complaint in this Court does the following: the settlement proposal calling for payment of burial expenses is termed "an attempt to extort a ransom"; the settlement proposal calling for recantation of previous allegations is termed "attempted subornation of perjury" (on the theory that since the previous allegations are true, recantation of them would be perjury); and Judge Coles' action in denying the motion is termed "aiding and abetting DeAndrade in attempting subornation of perjury and an attempt to extort a ransom. . ."

13. In my opinion, the formal characterization of judicial action as criminal in the admitted absence of any facts even remotely tending to show anything more than that the action complained of was at worst erroneous is unprofessional conduct meriting appropriate disciplinary action.

Canon 1 of the Canons of Professional Ethics provides:

It is the duty of the lawyer to maintain towards the

courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

Canon 32 provides: "No client . . . is entitled to receive nor should any lawyer render any service or advice involving . . . disrespect of the judicial office . . . ."

While relevant allegations contained in pleadings are ordinarily privileged as against suits for libel, see 33 Am. Jur. Section 149, abusive and defamatory criticisms of judicial acts included in pleadings, arguments, and briefs have been the basis for disciplinary proceedings against the responsible attorney. Re Philbrook, 105 Cal. 471, 38 P. 511, 884; Attorney General v. Nelson, 263 Mich. 686, 249 N.W. 439; Re Robinson, 48 Wash. 153, 92 P. 929; Re Andreu Ribas, 81 Puerto Rico 87.

14. No attempt has been made in this report to verify any of the allegations made by Mr. Whiteside other than those alleging criminal conduct by state court judges. The circumstances involved in the other allegations are exceedingly complicated, and any detailed inquiry concerning them would entail a protracted proceeding going far beyond anything necessary to determine whether or not Mr. Whiteside's conduct constitutes a breach of professional conduct. In effect, my inquiry respecting Mr. Whiteside's allegations concerning state court judges has proceeded as if a demurrer were filed to all of the factual allegations of his complaint, other than those alleging criminal conduct

by state judges. Whether all the other allegations are true or false, the allegations against the state court judges nevertheless merit disciplinary action. Finally, I should observe that in my opinion Mr. Whiteside's conduct appears to be misguided rather than malicious. He sincerely believes his clients have been grievously wronged by a series of improper and unlawful events, including a murder. He has been candid and co-operative in discussing the case with me. Apart from the complaint filed in this case, he has not, to my knowledge taken any steps to be abusive or otherwise act improperly toward the state court judges. Nevertheless, the impropriety of the allegations previously discussed is too clear to be ignored.

Respectfully submitted,

Jon O. Newman

Jon O. Newman
United States Attorney

UNITED STATES DISTRICT COURT - DISTRICT OF CONNECTICUT
SAMPSON TKACZYK and EVELYN TKACZYK, his wife,
and JULIA CRAVENS, his daughter, PLAINTIFFS
CIVIL ACTION NO. 11551
VS. KENNETH GALLAGHER, WALTER A. DeANDRADE, ROBERT A. ROUSSEAU, DR.STERLING P.TAYLOR, LEO T.BERNIERE, WALTER T. BERNIERE, NATHAN G.SACHS, HERMAN N.LEVY, PAUL A. SCHOLDER, ARTHUR B.O'KEEFE,JR., JAMES J. CORRIGAN, ARTHUR T.GORMAN, GEORGE R.TIERNAN, HERMAN LEVINE, EDWARD HORWITZ, JOHN HAMILTON KING, JAMES E.MURPHY, HOWARD W.ALCORN, CHARLES S.HOUSE, ELMER W.RYAN, JAMES P.DOHERTY, LEO PARSKEY, DEFENDANTS

August 24, 1966

AMENDED COMPLAINT

The plaintiffs herein amend their complaint by eliminating all of pages 1 and 12, and substituting therefor AMENDMENT pages 1 and 1-B and AMENDMENT page 12, there being no change in pages 2-11 of the complaint, nor in the addamnum paragraph on page 11. The Amendment also includes EXHIBITS "X" & "Y" which are annexed to the aforesaid 3 AMENDMENT pages.

The above named plaintiffs, by Loring J. Whiteside, their attorney, bring this their complaint against the defendants and for their claim respectfully show:

1. Jurisdiction is founded on the existence of one or more Federal questions as hereinafter more fully appears. The action arises under U.S.C. Title 28, Par. 1331 and involves primarily the First Amendment to the Constitution of the United States, preserving the free exercise of religion. The matter in controversy exceeds, exclusive of interest and costs, the sum of $30,000. The action also arises under Title 28, Sec. 1343 (3) of the U.S.Code, providing for actions to redress the deprivation under color of any law, statute, ordinance, regulation, custom or usage of any State of any right, privilege or immunity secured by the Constitution of the United States. And this action further arises under Rule 60 (b) 3 & 4 of the Federal

Rules of Civil Procedure, 28 U.S.C.A.; rendered possible after a 4½ year continuous effort to obtain recognition by the State Judicial Department, of the 1st Amendment right of Olga Gallagher, deceased, to underground burial as required by the church of her choice; which has completely exhausted State procedures or remedies, and leaves this cherished freedom a "will-o'-the-wisp" unless the Federal Court finds a way to enforce it.

2-A. The facts related in paragraph 20 of the complaint reveal that the 5 defendant Justices of the Supreme Court of Errors had no power to dismiss the plaintiffs' appeal before the record of the case was complete or ready for assignments of error or briefing in open defiance of long established practice rules, disregarding of which deprived the plaintiffs of due process of law and the equal protection of the law under the 14th Amendment, and rendered their judgment of dismissal void and of no effect for lack of jurisdiction. Such open defiance of practice rules, taken in conjunction with the string of falsehoods presented in open court by defendant DeAndrade, constituted extrinsic fraud and served to prevent the plaintiffs from presenting their cause of action to the court, the force and quality of which may be observed in the contents of EXHIBIT "Y" annexed hereto.

Various other instances of extrinsic fraud practiced by attorneys and judges upon the courts and the plaintiffs are set forth in the complaint and indicate how they succeeded in concealing 4 HANDWRITTEN LETTERS OF THE DECEASED OLGA GALLAGHER, set forth in EXHIBIT "X", annexed to the amended complaint herewith, which if presented to the court and openly and fairly considered on their merits, would have terminated this litigation in early December, 1961.

2-B. This action is brought for the issuance of a preliminary and final injunction to prevent the defendant Gallagher from cremating the body of Olga Gallagher in violation of her religious training and be-

lief in the Russian Orthodox Greek Catholic Church which absolutely forbids cremation as insisted upon by said Gallagher; and to enjoin him from claiming the right of cremation or any other privilege by reason of a judgment of dismissal rendered by the State Supreme Court of Errors on June 7, 1966 in appeal #5894 which was obtained by the practice of extrinsic fraud and thereby became void; and that he be further enjoined from pleading said judgment as res adjudicata or collateral estoppel of anything therein contained, pending the hearing and final determination of the issues herein; and this action is also brought for damages suffered by the plaintiffs as a result of a civil conspiracy among the defendants, whose wrongful acts have enabled said Gallagher to continue his infringement for the unprecedented period of over 4 years and 8 months, while said body is held in a cold storage vault at Evergreen Cemetery in New Haven, to the distress of both mind and body and spirit of the plaintiffs, her next of kin, who share the same religious belief held by their beloved daughter and sister, and are the only persons able and willing to uphold and enforce the Federal Constitutional right of the deceased to freedom of religion which is one of those freedoms which occupy a preferred position giving it a "sanctity and a sanction not permitting dubious intrusions."

3. On or about December 5, 1961, and continuing without interruption up to the present moment, the 22 defendants conspired and agreed together, each in his own particular field and time for action, and with other persons whose names are unknown to plaintiffs, to defraud and deceive the plaintiffs and to conceal and suppress the true cause of, and the facts which for 2½ years had been leading up to, the sudden and untimely death of 45 year old Olga Gallagher. Said conspiracy sought to prevent public disclosure and thorough investigation of the circumstances attending her death, which in the privately expressed opinion of the deputy coroner, the defendant Sachs, and a proper appraisal of the events preceding and following the death, indicate a premeditated murder of the deceased

by her husband, the defendant Gallagher.

4. In pursuance of said conspiracy, said defendant Gallagher, contrary to the provisions of Connecticut Statute 6-55, turned the body of his wife, Olga, which he claimed to have just found dead in bed, over to the defendant, Robert A. Rousseau, a funeral director, for immediate embalming, without notifying the medical examiner and letting him view and take charge of the body as required by said Statute 6-55, which subjected him under Statute 6-76 to a fine up to $500. or imprisonment up to one year, or both. At the same time said Gallagher indicated his intention of having the body cremated contrary to the teachings of the Roman Catholic Church in which he had been reared and of the Russian Orthodox Greek Catholic Church in which Olga had been trained. And up to the date of this complaint has upon numerous occasions refused to permit underground burial except for a limited period when he attempt to extort a ransom of some $1200 or more for the privilege, and later added a requisite that the plaintiffs commit wholesale perjury calculated to exonerate himself from any suspicion of murdering his wife, which rendered the privilege prohibitive.

5. In pursuance of said conspiracy, said defendant, Robert A. Rousseau, wilfully and unnecessarily touched and removed said body of Olga Gallagher to his establishment and completed embalming it about noon on said December 5th, without reporting the death to the medical examiner and getting a certificate of release from him for preparation on proper forms as required by Statutes 6-55 and 6-56, and thereby incurring the aforesaid penalties contained in Statute 6-76. Nor did he await a visit from the medical examiner before embalming, which destroyed much evidence of importance in arriving at a conclusion as to the cause of death. He was last requested by the plaintiffs on February 11, 1966 for some explanation or justification of his illegal actions, but has steadfastly ignored his legal obligation to do so.

6. In pursuance of said conspiracy, defendant Dr. Sterling P. Taylor, Medical Examiner and Health Officer of the Town of North Haven, delayed his viewing of the body until the noon hour on said December 5th after the embalming process had been completed, nor did he attempt to have the embalming postponed until after he had viewed the body and released it as required by law, nor did he or the coroner order an autopsy until such was demanded by the plaintiffs; nor did either of them order or conduct an inquest when an autopsy on December 6th, 1961 revealed the cause of death to be a 4 inch skull fracture behind the left ear, necessarily sustained within a week or 10 days of death, presumably on November 25, 1961. All of which subjected said Taylor to the penalties set forth in Statute 6-76 on several counts, and caused him to issue a certificate of death, erroneous in one or more particulars.

7. In pursuance of said conspiracy, defendants Leo T. and Walter T. Berniere, police chief and detective, presumably in charge of an investigation into the cause of said Olga Gallagher's death, failed to comply with the statutory requirement of Statute 6-55 and released the body for embalming which they knew involved the destruction of important evidence. They failed to ascertain, or to report at a hearing on December 11, 1961, the gangster history of defendant Gallagher, the principal suspect, his blackjack holdup of a gas station, his commission of 2 grocery store burglaries and his complicity in other crimes. They tried to dissuade the plaintiffs from insisting upon a thorough investigation, declared it would have to remain as an unsolved case, and went so far as to declare their unwillingness to arrest defendant Gallagher even if he admitted the murder of his wife, Olga, and refused in writing as late as February 16, 1966 to discuss or disclose any feature of their investigation, and conspired with defendants DeAndrade and Gallagher in various other fraudulent acts both before and after the death of decedent.

8. In pursuance of said conspiracy, defendant

Nathan G. Sachs, deputy coroner for many years, and attorney for the decedent from late June 1961 to the date of her death, assured the plaintiffs on December 7, 1961, and acquiesced therein up to February 4, 1966, that he was certain defendant Gallagher had murdered the decedent, his wife, and demonstrated to all 3 of them just how it had been done, and the motive. Thereby he gained the confidence of the plaintiffs; and although he knew they already had a very satisfactory attorney, he suggested they employ him as their attorney to represent them in the probate of decedent's estate, to which they assented, only to find that he betrayed them and misrepresented to them in so many ways, it was quite evident he made ulterior use of the truth so as to be in a better position to protect the gangster, Gallagher. He concealed the existence of Olga's will, gave the plaintiffs falsified excuses for failing to do what he had promised them, and concealed many convincing proofs of Gallagher's felonious behavior, all contrary to law and professional ethics and the duties of his public office; which in February 1966 said Sachs declined to rectify when urged to do so, and on April 29, 1966 he left the court room at high speed to avoid aiding the plaintiffs at a hearing in progress before Judge Parskey.

9. In pursuance of said conspiracy, attorney Walter A. DeAndrade, representing defendant Gallagher, presented fraudulent evidence at the hearing in probate court on December 11, 1961, to procure the appointment of his client as custodian of the body of the decedent, violated Canon 9 of professional ethics by communicating and negotiating direct with the plaintiffs, instead of their attorney, in an attempt to extort money out of them, contrary to Statute 53-360 and 54-60, under the false pretences that his client had the right to cremate the body of his deceased wife contrary to her religious training and belief, and intended to do so unless they paid a ransom consisting of all funeral expenses, despite her estate was amply able to pay them; and unless they absolved his client from all lia-

bility for injuries he had inflicted upon her in a maniacal attack upon her skull July 26, 1961 with the sharp edge of a full beer can and the blunt edge of a loaded flashlight, from which she was incapacitated to the day of her death. And on March 22, 1963 said DeAndrade, in violation of Statutes 53-143 and 54-60, added another requirement before said Gallagher would permit underground burial, which was that the plaintiffs would have to state on the court record that all of the allegations and claims set forth in their 50 page affidavit (pp. 52-102, Printed Record of State Supreme Court case #5427, Tkaczyk vs. Levine)are false and untrue, which, if accepted, would have subjected the plaintiffs to criminal prosecution for perjury. And up to date he has refused to permit underground burial except upon said impossible terms.

10. In pursuance of said conspiracy said DeAndrade conspired with defendant Edward Horwitz on or about September 1965 to defraud the plaintiffs out of certain monies which they both knew DeAndrade and his client, Gallagher, were not entitled to receive, and endeavored to entice attorney Henry Istas to take part in the defrauding process, which he repudiated as soon as he was aware of the corruption and felonious conduct involved. Upon various other occasions said DeAndrade, alone or in conspiracy with defendant Horwitz, resorted to falsehood in 1966 and before, to deceive various Superior Court Judges and State Supreme Court Justices on material questions of law and fact.

11. In numerous instances certain Superior Court Judges, certain State Supreme Court Justices and one certain probate judge entered into the conspiracy to conceal the murder and perform overt acts of their own, attributable in some instances to their desire to protect from exposure the increasing number of prominent attorneys and of the State Judiciary and others who had gradually been sucked in and become involved in the matter; but in view of the total immunity of judges from civil liability to litigants whom they have defrauded with malice but have acted within their juris-

diction, the names of some of the judges and justices, who have aided and abetted the conspiracy in this case with overt acts, are not set forth herein, nor are they made parties defendant. However such evidence presented at the trial will contribute to a clearer vision of the extent to which over 4½ years of litigation can extend the conspiracy, until it embraces even official court reporters and activities of the County Bar Association itself.

12. In pursuance of said conspiracy defendant Horwitz in his dual clerkship of the Superior Court and Supreme Court of Errors, both of New Haven County, has sought on many occasions in the court proceedings of this case to obstruct justice by going beyond his administrative role of strict neutrality and to influence judicial action and exercise judicial functions even in the face of judicial rebuke therefor. On numerous occasions he has exercised arbitrary and illegal authority in rejecting and processing motions particularly since January 1966. So powerful is his influence over the judiciary that on one occasion on March 22, 1963, he accomplished a complete reversal of a prominent judge's decision by responding instantly to a summons for help from defendant DeAndrade, conveyed by defendant Levine.

13. In pursuance of said conspiracy, defendant Herman N. Levy, upon recommendation of the Dale Detective Agency, and after taking time to investigate the merits of the case, entered into a contract to act as attorney for the plaintiffs to have defendant Gallagher declared an unfit person to act as custodian of his wife's body and thus accomplish underground burial, for which he set $250. as his fee and another $250. to procure the arrest and prosecution of said Gallagher for aggravated assault on his wife, Olga, on July 26, 1961; and to tie up her estate monies because of the homicidal injuries she had sustained as a result of that assault, the latter fee of $250 to be refunded if the two tasks were not accomplished. After receiving payment of $475. of the total fee, said Levy fraudulently

informed the plaintiffs there was no chance of having Gallagher declared an unfit person, concealed overwhelming evidence in his files with which he could easily and quickly carried out his contract, failed deliberately to perform either of the other two tasks, and was caught with his associate attorney, Paul A. Scholder, in a series of falsehoods which neither of them made any attempt to reform or explain; nor has said Levy returned the $475. fee, or any part of it, up to the date of this complaint, although duly requested to perform his contract or refund the fee, both of which he and said Scholder declined to do in a joint communication under date of February 3, 1966.

14. In pursuance of said conspiracy, defendant Paul A. Scholder, by invitation of defendant Levy, and the acquiescence of the plaintiffs, undertook to perform the 3 tasks assumed by said Levy as set forth in the preceding paragraph, but abandoned all 3 of them; and after being caught in a series of falsehoods, said Scholder and Levy were both permitted by the court to withdraw their appearances for the plaintiffs on September 22,1962 against the unheeded and unread protests of the plaintiffs, and after attempting to aid and abet defendant DeAndrade to coerce from the plaintiffs a ransom for his client Gallagher of around $1200., they both slid out of the case still clutching the $475. fee which they had extracted under false pretences and held on to, despite their breach of contract, and multiplicity of fraud.

15. In pursuance of said conspiracy, defendant Arthur B. O'Keefe, Jr., after promising plaintiffs to give them a copy of the will he drew for said Olga Gallagher, changed his mind after an associate lawyer in his office had a conversation with defendant Sachs, and then treated the plaintiffs so rudely as to constitute attempted intimidation, denying he ever drew such a will. Soon thereafter a phone message, purporting to be from a secretary employed in said O'Keefe's office, confidentially assured plaintiff Cravens that her mother had received rough treatment in being denied the

document she had requested, and suggested they refer the matter promptly to the Grievance Committee. Twice thereafter defendant Scholder assured the plaintiffs they could get an unsigned copy of the will at O'Keefe's office, but when they asked for it and O'Keefe confronted Scholder, the latter denied having so assured the plaintiffs, and thereby set off a serious deterioration of the attorney-client relationship between Scholder-Levy and the plaintiffs. To the date of this complaint said O'Keefe, contrary to the spirit and intent of Statutes 45-164 & 45-165, has persisted in concealing the contents of the will he drew for Olga, and admitted having drawn it prior to his aforesaid indirect contact with defendant Sachs. It was the repugnance to Olga of a personal relationship defendant O'Keefe sought to impose upon her in June 1961, and his senseless belaboring of her when she resisted his advances, which compelled her to seek new counsel for her divorce action against defendant Gallagher, and led her on or about the end of June 1961 to engage defendant Sachs as her attorney for that divorce. Defendant O'Keefe's letter to plaintiffs of March 7, 1966 ends any hope of reconciling Scholder's representations about the will with those of O'Keefe, or O'Keefe's first representations with his last.

16. In pursuance of said conspiracy, defendant James J. Corrigan, although sworn to the faithful performance of his duties as coroner and bonded in the sum of $3000. conditioned for the faithful performance of his duties, neglected his duties following the death of Olga Gallagher, and sullied his office as follows:

(a) He failed to take any disciplinary measures when he knew that defendant Taylor, his own appointee as medical examiner for North Haven, had failed to examine the body of Olga Gallagher prior to releasing it to the funeral director for preparation as required by Statutes 6-55 & 6-56; and thus he aided and abetted the destruction of very important evidence by condoning premature embalming.

(b) He failed to initiate any disciplinary measures or call for the prosecution of defendants Gallagher,

the two Bernieres and Rousseau for their deliberate violation of Statute 6-55 with penalties imposed by Statute 6-76.

(c) When first notified of the death he neglected to note the very suspicious fact that Olga had no doctor to attend her for severe hemorrhaging which apparently caused her death at an untimely age, and that her own doctor refused to sign the death certificate when called upon to do so before defendant Gallagher notified the police. A bloody blanket in the hands of police aroused no suspicion in his mind.

(d) He made no move for an autopsy until the plaintiffs demanded one and reported their suspicion of foul play, nor did defendant Taylor request one.

(e) When the autopsy revealed the cause of death to be a 4 inch skull fracture below and behind the left ear and that the impact of the blow causing it was most likely directly over the fracture itself, it was for the first time painfully evident that violence had been the cause of her death and nothing short of a searching inquest could possibly determine the circumstances under which the mortal injury had been sustained. Yet defendant Corrigan neglected his duty and neglected the opinion of his deputy Sachs, who by December 7, 1961 was certain Olga had been murdered by defendant Gallagher whose conduct for two years towards Olga had indicated a psychopathic condition in him reaching clear back to his early married life in or near Bristol, Connecticut, where he was quite generally recognized as the weapons expert of a very active and very dangerous mob of gangsters, and where the newspapers provide a far better record of Gallagher's criminal behavior than police or state's attorney's records.

(f) He failed in his duty under Statute 6-57 to make all proper inquiry respecting the cause and manner of death and thereby became subject to the penalties set forth in Statute 6--76.

(g) He failed to use the extensive power conferred upon him by Statute 6-70 to obtain evidence and to cause the arrest and commitment to jail of murder suspects.

(h) When the plaintiffs found he was entertaining some erroneous evidence with which to exonerate defen-

dant Gallagher, and sought to explore it further with him, he turned upon the mother of Olga and threatened to arrest her if she did not get out of his office immediately, and he actually pushed her bodily out of his office by use of physical force which constituted assault and battery, when his sworn duty called for diligent search for the truth, for which he demonstrated he had no use.

(i) Nor would he acknowledge, answer or explore material facts pointing to murder by defendant Gallagher contained in 3 letters which the plaintiffs wrote and brought to his attention, one through the medium of Dr. W. Robert Adams of Yale University who conducted the autopsy.

(j) His aforesaid behavior and his failure to reply to plaintiff's letter of February 1, 1966, the last one of a series, or to offer any reasonable explanation of his conduct, marks defendant Corrigan as the focus for the obstruction of justice in this case and the king-pin of the conspiracy, whose neglect and misfeasance in office is evidence of his yielding to the enormous power wielded by those conspirators whose names are unknown, but whose wishes are faithfully observed by all of the defendants.

17. In pursuance of said conspiracy, defendant Arthur T. Gorman, recently resigned State's Attorney, turned a deaf ear when the mother plaintiff sought his help in person upon two occasions at his official office; and when the sister plaintiff communicated with him by letter at his personal law office, he never showed his face or answered a word. His official secretary would not permit him to be seen or consulted; she assigned erroneous causes for Olga's death and professed superior knowledge honeycombed with inaccuracies typical of carelessness and superficiality, devoid of the thoroughness and serious consideration a murder case deserves and requires, and quite generally treated the whole matter as a joke. Four letters were sent him by plaintiff Cravens between the dates of July 11 and October 3, 1962 aggregating upwards of 11 pages of facts bearing upon the assault and murder angles and

asking for action by him as State's Attorney. No reply was ever received, no investigation initiated, no questions ever asked or interest evinced up to February 15, 1965, the date of his resignation from office.

18. In pursuance of said conspiracy, defendant George R. Tiernan who succeeded to the office of State's Attorney after defendant Gorman's resignation, has, since March 1, 1966 blocked a thoroughgoing investigation into the death of Olga Gallagher by the State Police, considered important by an officer at the Bethany Barracks and by another official at the headquarters in Hartford. Neither investigation could be launched without the permission of defendant Tiernan. The Hartford interest in the case had progressed far enough for a State Police car from Hartford with 2 officials to be dispatched to Ansonia on March 22, 1966 on some phase of the inquiry. The Bethany inquiry on November 22, 1965 sought Tiernan's permission to pick up and pursue the investigation, and was told he would consult defendant Corrigan. Since that both inquiries have come to a sudden stop with peremptory and conclusive overtones. This very recent double blockage by defendant Tiernan, together with his neglect of duty to take any action requested by all 3 plaintiffs in their letter to him of March 5, 1966 in which was reviewed all the material supplied to defendant Gorman, with more added, reveals Tiernan as a key obstruction in the civil conspiracy.

19. In pursuance of said conspiracy, defendant Herman Levine conspired with the probate judge who had appointed him administrator of the estate of Olga Gallagher, to permit an unwarranted delay of over 4 months in the publication of the solvent notice and knowingly to permit the statute of limitations to expire against the right of the estate to recover damages from defendant Gallagher for the serious injuries sustained by deceased from his vicious psychopathic assault upon her skull on July 26, 1961. He aided defendants Gallagher and DeAndrade to obtain an illegal non-suit of plaintiffs' efforts in Superior Court seeking under-

ground burial for the deceased; and conspired with them to set up two false and fraudulent special defenses on January 11, 1966 in an appeal from probate to Superior Court, case No.108,027, which he admitted in writing on April 28, 1966 was done with his knowledge and consent; and in August and September 1965 he conspired with them and defendant Horwitz in an attempt to defraud the plaintiffs out of $30. costs in Supreme Court Appeal No.5427; and indulged from time to time in other overt acts during his term as administrator of said estate.

20. In pursuance of said conspiracy, defendants King, Murphy, Alcorn, House and Ryan, sitting on the State Supreme bench, listened to a string of falsehoods related to them in open court by defendant DeAndrade and knowingly used them to fabricate a false charge against the plaintiffs of failing to use due diligence in prosecution of their appeal, which they knew was not true and was useless to support a dismissal, but they used it anyway and clearly acted without jurisdiction to dismiss the appeal on June 7, 1966. The real reason for dismissal was to keep out of the record and to shut off the damaging evidence contained in Olga's 4 letters that defendant Gallagher is a very dangerous gangster with a sociopathic personality disturbance who had threatened her life countless times with his firearms, so that she was in grave danger every moment she lived with him in the same house. The draft findings on a supplementary appeal revealed these facts and were sufficient to win the case in a walkaway. This is the second time the High Court had done the same thing. A previous appeal was dismissed on December 3, 1963 also without jurisdiction and for failure to use due diligence, also falsely charged, for only the day before, Dec. 2nd. the plaintiffs had filed a supplementary appeal under Practice Book Sec.639 and another appeal on Nov. 7th in which the transcript disclosed a Superior Court judge aiding and abetting DeAndrade in attempted subornation of perjury and an attempt to extort a ransom under false pretences. These 5 defendants and 3 other Justices sitting in 1963 have shown a preference to violate Canon 11 of Judicial

Ethics and vent their wrath on those who report to them instances of corruption and misconduct. The offenders go scot free. Defendants King and Murphy know there was something very wrong about their dismissal of the first appeal in December 1963, for they issued secret orders to clerk Horwitz that judgment was not to be entered in that appeal and it had not been entered up to February 18, 1966, when the time had long since passed for any entry of judgment in that case No.5427. Two instances of illegal dismissal without jurisdiction and on false charges, shattering constitutional rights to due process and equal protection, are quite enough to demonstrate the state courts all the way up are determined no justice shall be administered in what most insiders know is a murder case by a gangster with unlimited protection who has defied Olga's constitutional rights to that kind of burial her freedom of religion requires.

21. In pursuance of said conspiracy, defendant Doherty, acting as a Superior Court Judge at a hearing on March 11, 1966, admittedly acted without jurisdiction in denying a coram nobis petition of the plaintiffs and sending it up to the Supreme Court which he could not help knowing had not the slightest jurisdiction over it at that time. His only purpose was to get them into a procedural jam which would handicap them in the action for underground burial. His next move was to throw out a very effective pleading of the plaintiffs, again acting without jurisdiction and quite fraudulently and so rudely that it amounted to intimidation from which it took the plaintiffs several weeks to recover. He refused to hear either oral or written argument from them and forbade the daughter ever again to act as the mouthpiece for her parents. This complete black-out of justice occurred on April 15, 1966 and had a two-fold purpose. It served to protect defendants DeAndrade and Horwitz from an exposure of their attempt to defraud the plaintiffs out of $30. and it made it to appear the plaintiffs were in default, when they were far from it. Then he entered into conspiracy with Judge Parskey to dismiss the whole appeal from probate, for that was

defendant DeAndrade's greatest anxiety because the reasons of appeal opened up the way to presentation of much available murder evidence which all of the conspirators sought to hide. At a hearing on April 29 and again on May 6, 1966 Judge Parskey denied the plaintiffs, who appeared pro se by necessity and not from choice, numerous rights universally accorded litigants and twice refused their entreaties to present their oral argument in writing with memo of law showing the impossibility in this state of dismissing an appeal from probate for failure to plead. He refused even to accept the legal memo they handed to him, and on May 3rd, with no power to do so, dismissed their appeal from probate. The transcripts of these hearings demonstrate that the conspiracy to defraud and defeat the plaintiffs was now right out in the open with no mercy or justice available in state courts on either the burial or the murder angles.

22. By reason of the premises aforesaid the plaintiffs have suffered intense pain, anguish and distress of mind and body, have been under extreme nervous tension without any surcease for well over 5 years, and many times have been at the point of desperation at the imminence of possible cremation and how to find and pay for counsel to defend their deceased daughter's Federal Constitutional right to underground burial as required by her religious training and belief. This unprecedented period of uninterrupted physical and nervous strain over the abuse and mistreatment of a dead body has resulted in damage to the plaintiffs of:

(a) $4000. for legal expense; $6000. investigative expense; $3000. for travel expense in attendance at over 40 hearings; $3000. travel in and out of state to find or consult counsel; $1000. travel in 3 states on investigative work; $2000. cost of preparation of motions, petitions and other papers, and of a vast correspondence with officials and lawyers.

(b) $3500. for hospital and medical expense.

(c) $330,000. for pain and suffering of mind and body.

(d) $660,000. for exemplary and punitive damages.

(e) $25,000. for counsel fees.

WHEREFORE, plaintiffs pray:

1. For judgment against the defendants for the sum of $1,037,500., plus costs of the suit and interest.

2. The immediate issuance of a preliminary injunction restraining the defendant Gallagher from cremation of the body of Olga Gallagher as long as he continues to be the legal custodian thereof, and from claiming that or any other privilege or benefit from a judgment of dismissal rendered on June 7, 1966 by the Supreme Court of Errors in Appeal #5894, which was obtained by the exercise of extrinsic fraud and rendered void thereby; and from pleading said judgment as res adjudicata or collateral estoppel, until the matters herein are fully heard and determined, or until the further order of the Court in the premises.

3. The issuance of a final injunction permanently restraining said Gallagher from commission of any of the acts set forth in the preceding paragraph; from attempting to coerce the plaintiffs into payment of any part of the funeral or burial costs, or any part of the monument or perpetual care costs, as a price for respecting the religious training and belief of the deceased and of her next of kin and their Federal Constitutional rights to the free exercise of same; and from delaying the underground burial of said remains in an Ansonia cemetery longer than ten days after action of this Court in granting a final injunction, or other relief.

4. Such other and further relief as to the Court seems proper.

TRIAL BY JURY OF ALL ISSUES HEREIN IS DEMANDED BY THE PLAINTIFFS.

Loring J. Whiteside
Loring J.Whiteside,Att'y. for plaintiffs
South Pease Road,Woodbridge,Conn.06525
Phone 387-3358

STATE OF CONNECTICUT:

: SS. Ansonia

COUNTY OF NEW HAVEN :

Sampson and Evelyn Tkaczyk and Julia Cravens of Ansonia, Connecticut, being duly sworn, depose and say that they are the plaintiffs in the foregoing complaint, that they have read pages 2 to 11 of said complaint and Amendment pages 1, 1-B and 12, including EXHIBITS "X" & "Y" which are annexed thereto and know the contents thereof; and that the matters set forth therein are true to their own knowledge.

Sampson Tkaczyk
Sampson Tkaczyk

Evelyn Tkaczyk
Evelyn Tkaczyk

Julia Cravens
Julia Cravens

Subscribed and sworn to before me
this 24th day of August, 1966.

Loring J. Whiteside
Notary Public
My commission expires April 1, 1969.

(N.S.)

UNITED STATES DISTRICT COURT - DISTRICT OF CONNECTICUT
In re LORING J. WHITESIDE CIVIL NO. 11,798

ANSWER & COUNTERCLAIM TO CHARGES IN ORDER TO SHOW CAUSE

June 12, 1967

The respondent's answer, defenses and counterclaim to the charges set forth in the order to show cause are as follows:

1. Admits the allegations of paragraph (1).
2. Denies the allegations of paragraphs (2)&(3).
3. As to the allegations of paragraph (4) respondent points out that he made no allegations of criminal conduct on the part of any justices or judges in any part of said complaint; it was Chief Judge Timbers himself in par. (2) of the order to show cause who first made that allegation. Six paragraphs of said complaint, 2-A, 2-B, 3, 11, 20 & 21, recite numerous wrongful and fraudulent overt acts of various state judges, named and unnamed, but it is clearly and unmistakeably stated in par. 2-B that the action was "brought for damages suffered by the plaintiffs as a result of a civil conspiracy among the defendants, which completely negatives any idea of intention to ascribe criminal action to any judge. Whether the judicial overt acts described also have some criminal significance is a possibility never considered or intended by respondent, and is of such little consequence or importance in this proceeding, or in the main action No. 11551, that he has had no free time to examine the criminal statutes so as to verify Judge Timbers' allegation. He will be left to its proof, if he regards it important.

4. As to the allegations of par. (5); they are so vague and incomprehensible, and fail to point out what and how many statements about what and how many judges Chief Judge Timbers regards as charging criminal conduct, it is impossible for the respondent to frame a

responsive pleading. In an effort to overcome this glaring defect, and hoping for candor and fairness on the part of both Judges Timbers and Blumenfeld, a motion for a more definite statement was filed on May 4, 1967 under Rule 12 (e) of the Rules of Civil Procedure, which was bluntly denied in an evasive blast of sarcasm on May 17, indicative of venemous prejudice against any fair presentation or consideration of the issues. Respondent's only recourse at this stage of the proceedings is to deny, which is hereby done, that there was any inclusion in said complaint of any allegations of judicial criminality and denial of the slightest disrespect of judges and judicial offices and of any violation of Canons 1 and 32.

5. The 11 page MOTION TO QUASH, including the 38 page Apperdix attached thereto, filed herein on March 20, 1967; and the 5 page MOTION FOR SUMMARY JUDGMENT, including the 3 EXHIBITS "A", "B" & "C", mentioned therein and filed on April 3, 1967, with MOTION filed May 22, are all adopted by reference and made a part of this answer.

FIRST AFFIRMATIVE DEFENSE.- Constitutional right of respondent to freedom of speech.

1. All comments of whatsoever nature in all parts of Complaint No.11551 pertaining to state judges relate to "proceedings in cases already heard and decided, and not to matters then pending or on trial." Hence there was no current interference with the administration of justice is involved. No base or unworthy motives are involved, no intimidation, no indecent language, nothing but a respectful statement of overt acts. The respondent's FIRST AMENDMENT right to freedom of speech and publication of his sentiments on all subjects is paramount, and cannot be violated by disbarment or the slightest disciplinary action of this court. Re Hart, 104 Minn.88 (1908); 17 L.R.A.(N.S.) 585,591; State ex rel Atty.Gen. vs Circuit Court, 97 Wis. 1, 12; 72 N.W.193. Any attempt to interfere with that right only renders an adverse decision null and

void. The state judges have at their disposal ample remedies to rectify any misstatement in the complaint.

SECOND AFFIRMATIVE DEFENSE. Immunity of respondent from harassment.

1. Every word written or spoken by the respondent in said Complaint about judges was pronounced in the ordinary course of his duty to his clients, imposed upon him by CANONS 29 & 15 of Professional Ethics, which affords him complete immunity from the harassment of any such proceeding as this, and exempts him from past, present and future harassment, defamation and prosecution at the hands of this or any other court. This action should be instantly terminated with apologies. He did not exceed his duty in any particular. It was the seizure of the illegal jurisdiction by the 7 state judges which provided the bottle-neck effectively blocking the plaintiffs and rendered effective all of the misdeeds of the other defendants. It was the outstanding overt act in the entire case and happened twice, and under CANON 15 could not be omitted.

2. It is a positive rule of law which protects judges, counsel, witnesses and parties for words written or spoken in the ordinary course of any proceeding before any court or tribunal recognized by law, and has been so stated by the United States Supreme Court in Spalding vs. Vilas, 161 U.S. 483,497(1896). In view of such authority and such a rule of law, this court is clearly without jurisdiction of the subject matter or of the respondent, particularly where 7 of the state judges acted without jurisdiction and are subject under both Connecticut state law and Federal law to civil damage suits for injuries sustained by private litigants. (for case citations see par.4 of MOTION FOR SUMMARY JUDGMENT)

THIRD AFFIRMATIVE DEFENSE. Allegations about judges shockingly true but respectful.

1. Usurping jurisdiction which they could not help

knowing they did not possess by the 7 judges named as defendants completely wipes them out as subject matter in this proceeding. This is abundantly evident from the complaint. They are being sued as individuals and brought this plight upon themselves. Dismissal as to them is an absolute necessity. There is no legal or equitable escape for them.

2. Par. 20 of the Complaint speaks of a state "transcript disclosed a Superior Court Judge aiding and abetting DeAndrade in attempted subornation of perjury and an attempt to extort a ransom under false pretences." This was shown to be true at the hearing before Judge Blumenfeld by documentary evidence consisting of the transcript itself marked EXHIBIT "B"; the state motion for cease and desist order against attorney DeAndrade under CANON 11 of Judicial Ethics (AP 4-6); the letter of Julia Cravens to Judge Coles (AP 7); plaintiffs' Appeal and Assignments of Error in state Appeal #5427 (AP 8-11). These and additional documents (AP 13-37) reveal that in all likelihood it was the seriousness of the charges against Judge Coles which triggered the determination of the then 5 Justices of the Supreme Court to seize jurisdiction they knew they did not possess to dismiss illegally the appeal #5427 and thus save Coles as well as various judges and lawyers who had been conspiring to defeat the constitutional rights of Appellants and keep the murder facts out of the public eye. This plethora of documentary evidence shows that the state courts were thoroughly conversant with everything the federal court is talking about. It is nothing new or unfair or disrespectful, but shockingly true and thoroughly documented.

FOURTH AFFIRMATIVE DEFENSE. Illegal seizure of jurisdiction by 7 state judges.

1. This defense is touched upon necessarily in the preceding defense, but is more extensively covered in Par.4 of the MOTION TO QUASH filed March 20 and also in Par. 4 of the MOTION FOR SUMMARY JUDGMENT filed May

22, to which reference is made and incorporated herein. This illegal usurpation of jurisdiction by the 7 judges is the only reason they were or could be named as defendants. Had they exercised a legitimate jurisdiction they would have complete immunity from suits of any kind by private litigants. As it is this court should have known they do not have the slightest vestige of jurisdiction to cite these 7 judges as victims of a breach of ethics. This court's total absence of authority in such cases is monumental.

FIFTH AFFIRMATIVE DEFENSE. This Court's lack of jurisdiction.

1. The preceding 4 affirmative defenses, each of itself, is adequate ground to establish lack of jurisdiction in this Court to initiate or maintain such a proceeding. The Constitution forbids it, the loss of immunity by the 7 state judges leaves nothing to be protected, and the complete immunity of the respondent from harassment renders it inane, when he is seeking to uphold "THE HONOR OF THE PROFESSION" as required by Canon 29 of Professional Ethics, by accepting "without hesitation employment against a member of the bar who has wronged his client." Likewise respondent was and is required by CANON 15 to give his "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability, to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense." Under the masquerade of upholding CANONS 1 & 32, Chief Judge Timbers has illegally seized a jurisdiction over subject matter contained in Complaint 11551 which he cannot help knowing he does not possess in the effort to force or intimidate the respondent into a breach of CANONS 15 & 29.

And any judge who aids him in that effort is guilty of an abuse of discretion, overwhelmingly sufficient to vacate any adverse decision in this proceeding.

2. The reasoning and authorities cited in the following court opinions are conclusive as to the District Court's complete lack of jurisdiction over the subject matter in this proceeding. In Ex Parte McLeod (D.C.) 120 Fed.130,136 the court said:

"Such criticism (of a judge) is the right of the citizen and essential, not only to the proper administration of justice, but to the public tranquility and contentment. Withdrawing power from courts to summarily interfere with such exercise of the right of the press and freedom of speech, deprives them of no useful power. ** Every newspaper proprietor within the state, and every other citizen therein, in his capacity as such, might, therefore, as we hold, have written or published the letter of the accused to the governor, and the matter contained in the body of the letter to the chief justice and not be answerable for so doing, otherwise than in an action triable by a jury of his peers; and though one became an attorney, he still retains his rights as a citizen and a free man. 'Fidelity to the court', as was said in the Pennsylvania case above cited (Ex parte Steinman, 95 Pa.220) 'includes many particulars but they all evidently concern his official relations.' The attorney is bound to render the court the respect which is its 'due' under the law. This is the full extent of his obligation. Notwithstanding his oath, he may exercise his constitutional rights. No statute could have any validity which would undertake to impair or abridge them. He may sue a judge in his own behalf or for another, alleging every fact pertinent to the cause, and not thereby fail in his professional duty. Nor is he professionally answerable for a scrutiny into the official conduct of the judges, which would not expose him to legal animadversion as a citizen. Austin's Case, 5 Rawle (Pa.) 205."

And in Re-Hart, 104 Minn.88 (1908), 17 L.R.A.(N.S.) 585,592, the Court said:

"Chief Justice Sherwood was not only a most eminent jurist, but was also in his day the very highest authority in all matters pertaining to professional ethics. 'No class in the community', said he in the Steinman case, 95 Pa.220, 'ought to be allowed freer scope in the expression or publication of opinions as to the capacity, impartiality or integrity of judges than members of the bar. They have the best opportunities of observing and forming a correct judgment. They are in constant attendance on the courts. ** To say that an attorney can only act or speak on this subject under liability to be called to account and to be deprived of his profession and livelihood, by the very judge or judges whom he may consider it his duty to attack and expose, is a position too monstrous to be entertained for a moment under our present system.' This language was not written because of any peculiar provision of the Pennsylvania Constitution. It is applicable everywhere; and we adopt as our conclusion here these words of Justice Brewer: 'After a case is disposed of, a court or judge has no power to compel the public, or any individual thereof, attorney or otherwise, to consider his rulings correct, his conduct proper or even his integrity free from stain.' Re Pryor, 18 Kan.72;76. **

We have yet to learn that the Federal courts or judges have failed to maintain the respect and confidence of the people because powerless since Act March 2, 1831 Chap 99, 4 Stat.at L.487, U.S.Comp. Stat.1901,p.583, to punish summarily those guilty of such utterances, not addressed to the judge in person. 'Respect to courts cannot be compelled. It is the voluntary tribute of the public to worth, virtue and intelligence, and whilst they are found upon the judgment seat, so long and no longer will they retain the public confidence.' Stuart vs. People, 4 Ill. 395, 405."

3. Jurisdiction of the subject matter is also lack-

ing because the CANONS OF ETHICS have never been adopted by the Federal District Court of Connecticut as a perforce statute and hence cannot be made the basis of any disbarment or disciplinary action, unless authorized by the common law for moral turpitude, fraud, dishonesty, deceit, betrayal, bad faith, excessive fees or malicious conduct, not the slightest hint of any of which is present in this proceeding. Par. 8 of the MOTION TO QUASH is made a part of this paragraph.

4. Jurisdiction is further lost in this proceeding by the denial on May 17 of respondent's motion for a more definite statement of the vague and ambiguous contents of paragraphs 2 and 5 of the Order to show cause which makes it impossible for respondent to know what and how many statements in the Complaint Judge Timbers thinks are criminal charges against judges. Not even to know what the charges are is a deprivation of due process of law and recognized as such all over the land . Such a denial is also a fitting measure of the bitter prejudice and bias in the minds of all the District Court judges in Connecticut.

5. The astounding and shameless announcement of Judge Blumenfeld on May 31 that "No more 'motions' will be ruled upon is the crowning blow. What the United States Supreme Court thinks of such behavior is well stated by Justice Black in Holt,et al. vs. Virginia, 381 U.S.131, 136-137 (1965):

"It is settled that due process and the 6th Amendment guarantee a defendant charged with contempt such as this "an opportunity to be heard in his defense,-a right to his day in court and to be represented by counsel. In re Oliver, 333 U.S.257,273. See also Gideon vs. Wainwright,372 U.S.335. The right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues. See Willner vs. Com.on Character & Fitness, 373 U.S.96,105. And since a fair trial in a fair tribunal is a basic requirement of due process, In re Murchison, 349 U.S. 133,136, itv necessarily follows that motions for

change of venue to escape a biased tribunal raise constitutional issues both relevant and essential. Cf. Irvin vs. Dowd, 366 U.S.717,722; Tumey vs. Ohio,372 U.S.510 ***** (p.139) "our conclusion is that these petitioners have been punished by Virginia for doing nothing more than exercising the constitutional right of an accused and his counsel in contempt cases such as this to defend against the charges made. REVERSED & REMANDED."

The above quotation and citation was spread out before Judge Blumenfeld on March 20, 1967 on page 10 of the MOTION TO QUASH. This is the supreme law of the land and yet Judge Blumenfeld deliberately disregards it as binding on him and proceeds as though he is a depository of arbitrary power in defiance of CANON 20 of Judicial Ethics. And by his RULING on the Motion to Quash wherein he disregarded or overlooked one of the outstanding facts and features of the Complaint and arguments of respondent as to the wrongful seizure of a jurisdiction they knew they did not possess by the 7 judges, Judge Blumenfeld failed to avoid the suspicion of arbitrary conclusion required of him by CANON 19. His fallacious reasoning with respect to need for library research to compose an answer and in denying a more definite statement, and his sarcasm in those two rulings on May 17 and another on May 31 about the summary judgment together with his threats and lawless denials, all of which openly appear upon the face of the record of this case, have disqualified him as an impartial judge to hear this case or pass upon it, and show that he has forgotten the injunction of CANON 33 requiring him to be "particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct." His absolute refusal to rule upon any more motions makes that the rule of his court and forbids a motion for his disqualification, change of venue, importation of a judge from outside of Connecticut, or even of dismissal for lack of jurisdiction, which is

the burden of this FIFTH DEFENSE, all of which in accordance with the rules and good practice should precede any hearing on the merits and should even precede the answer. The predicament in which a decent lawyer finds himself when confronted by a determined prejudiced judge who won't even obey the United States Supreme Court is fantastic and sort of humorous. Anyway from this moment on, the respondent protests against any further action by Judge Blumenfeld in this case on motions or anything else. And refuses to waive his constitutional rights to due process which will render null and void any adverse action in the past or in the future by Judge Blumenfeld, whose jurisdiction in this case is utterly and completely gone.

SIXTH AFFIRMATIVE DEFENSE. Absence of criminal charges vs. state judges.

1. Perhaps the biggest mistake made by Chief Judge Timbers in filing these charges against the respondent was his jumping to a conclusion, after reading the Complaint that the state judges were accused of criminality. Not once in the whole Complaint was the word "criminal" used to describe their behavior. The whole action is a civil one; so stated at the beginning as "CIVIL ACTION No. 11551." In the 12th line of Par. 2-B it is specifically stated to be a "civil conspiracy" among the defendants which did the damage. Only the overt acts of the judges are enumerated and clearly stated to be part of the CIVIL CONSPIRACY. That left Chief Judge Timbers out on a limb from the very beginning and should have been sufficient to warn him that he had no jurisdiction of the subject matter in this proceeding. To found a disbarment action upon a MISTAKE only serves to render a judge guilty of acting without jurisdiction, and knocks out his immunity for misconduct in so doing. Even if the same overt acts of the 7 judges may be susceptible of both civil and criminal interpretations, the one intended by the author governs, particularly when he tags it as "CIVIL" in the same document. Two cases speaking of a similar situation held that upon the respondent's dis-

avowal of the ulterior interpretation, proceedings against the respondent must at once be discontinued. In re Wooley, 11 Bush.(Ky.)(1875) 95, 109; Ex parte Biggs, 64 N.C.214(1870). Both Chief Judge Timbers and Judge Blumenfeld were duly apprised of their gross mistakes in Par.3 of the MOTION TO QUASH on March 20,1967 and have had nearly 3 months in which to discontinue this proceeding or to come up with some authority to justify their mistake. Their failure to do so is indicative of major prejudice which compelled Judge Timbers to withdraw long ago as one of 4 judges scheduled to sit on this case, but what is more, it is indicative of a civil conspiracy between them deliberately to misconstrue respondent's writings and intentions and launch a malicious and false accusation against him by the seizure and usurpation of a jurisdiction they could not help knowing they did not possess. Par. 3 of said MOTION TO QUASH is made a part of this defense.

SEVENTH AFFIRMATIVE DEFENSE. Facts & events requiring summary judgment.

1. The 9 paragraphs of the May 22,1967 MOTION FOR RULING AS TO SUMMARY JUDGMENT are referred to and made a part of this defense, with special attention directed to Par.7 which bears out everything stated about the unnamed judge in Par. 20 of the Complaint, revealed by the U.S.Attorney in his MEMO to be former state Judge Albert L. Coles of Bridgeport. The only statement in the Complaint was that "the transcript disclosed a Superior Court judge aiding and abetting DeAndrade in attempted subornation of perjury," etc. The transcript, EXHIBIT "B", certainly did disclose it.

EIGHTH AFFIRMATIVE DEFENSE. Various full defenses

1. The respondent is bound by CANON 29 to UPHOLD THE HONOR OF THE PROFESSION. He is bound to do that even if all the state and federal judges in Connecticut try to get him to do otherwise. Par. 2 of MOTION TO QUASH is made a part hereof.

2. No moral turpitude of the slightest degree is attributed to respondent herein. Par. 5 of the MOTION TO QUASH is made a part hereof.

3. Disbarment under the state of facts in this case cannot be done under the law as it has been the last century and a half in this country. See the NINTH AFFIRMATIVE DEFENSE following, and Par. 6 of MOTION TO QUASH is made a part hereof.

4. Already 3 judges of this court have voluntarily retired from serving as judges on this proceeding as a result of 2 affidavits filed March 15, 1967, which is striking evidence of how hard this Complaint has hit them in their business and social acquaintanceships and rendered it practically impossible for any of the 4 District Judges to observe CANON 33 requiring them to "avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct." Great credit is due Judge Zampano for his promptness in disqualifying himself as judge for this reason within 3 days after he first read the Complaint. It is high time for Judge Blumenfeld to follow suit. He has hung on far too long.

5. The complete collapse of all case authority relied upon to support or sustain this proceeding is set forth in Pars. 9, 10, 11, 12, 13 & 14 in MOTION TO QUASH and are made a part hereof. Par. 15 affords a sad picture of conditions in the highest state courts of Connecticut, notably set forth in part in the Complaint about concealment of what is regarded by many as a murder; and the contents of Pars. 16, 17, 18 and 19 are further illuminating sidelights on the civil misbehavior of all 22 defendants as well as others involved. The deeper you go, the worse it gets and the easier to understand and deplore. Pars. 15-19 are made a part hereof and make it clear why it is important that respondent insists upon obeying CANON 29 to UPHOLD THE HONOR OF THE PROFESSION.

NINTH AFFIRMATIVE ANSWER. What the best authorities say.

1. Quotation from RULING CASE LAW, vol.2, Par.184, p.1093, Lawyers' Pub.Co.

"Since it is usually held that the purpose of disbarment is not the punishment of the offender, but the elimination from the legal profession of persons unfit for membership therein, the instances in which a court may properly strike the name of an attorney from the rolls merely because of his acts or words involving a contempt for, or want of confidence in, such court or a member thereof must be comparatively rare. **** It is evident that criticism of a court cannot properly constitute ground for disbarment so long as it is bona fide and does not pass the limits of decency and propriety under the circumstances, and since the purpose of the rule against harsh and unjust criticism of judicial acts is to prevent the impairment of the administration of justice, such rule is usually applied with less strictness to past than to pending causes, and has even been held inapplicable to past decisions. **** And a mere libel upon a judge is not a cause of disbarment unless its object is shown to have been "the acquirement of an influence over a judge in the exercise of his judicial functions, by the instrumentality of popular prejudices."

Note- Numerous case citations accompany the above text.

* * * * * * * * * * * * * *

The respondent demands a trial by jury of all issues of fact in the main proceeding as well as in the Counter-claim to follow.

BY WAY OF COUNTERCLAIM vs JUDGES TIMBERS & BLUMENFELD

1. The allegations in the 5 paragraphs of the answer and in the 9 affirmative defenses aforesaid are made a part hereof.

2. Under Rule 13 (a) of the Rules of Civil Procedure this counterclaim is filed arising out of the transaction or occurrence that is the subject matter of the opposing party's claim and alleges as a FIRST COUNT a conspiracy between the two defendants to seize a jurisdiction they could not help knowing they did not possess, and initiated Disciplinary Action No.11,798 against respondent when they knew the charges were false and intended to pervert justice in order to protect their friends and social and business associates from such ignominy as they had earned by civil misbehavior in state courts, caring nothing about justice for the respondent or his clients or the duty he owed them to do exactly as he did. This action arises under Secs. 1343 and 1345 of the U.S.Code, under the common law and claims damages to the reputation and professional standing of the respondent and for his time and disbursements in defending a fraudulent charge as set forth in the preceding pages of the above answer and defenses.

WHEREFORE, respondent claims damages in the amount of $35,000. including exemplary damages, but nothing for pain and suffering, because he rather enjoyed observing the behavior of presumably highly intelligent persons behave so outrageously when all of a sudden the civil misbehavior of their friends was brought to light by Complaint 11551.

WHEREFORE, Respondent demands prompt dismissal of all charges against him in Order to show cause, and an early trial of the charges in said counterclaim.

June 12, 1967

Loring J. Whiteside
Respondent pro se
South Pease Road
Woodbridge, Conn. 06525

EXCERPTS FROM 13 PAGE TRANSCRIPT OF HEARING JUNE 20, 1967 BEFORE JUDGE BLUMENFELD

(Page 4) COURT: ** You don't deny that that is what your complaint stated, do you?

WHITESIDE: If your Honor please, I simply stand on the defenses as stated there, and I have nothing to add whatsoever.

COURT: Well, you go on to say in this defense that this was shown to be true at the hearing before Judge Blumenfeld by documentary evidence consisting of the transcript marked Exhibit B. Is there any other evidence of that that you wish to offer at this time?

W.: Your Honor, I am here simply as an observer this morning and not as a participant, and I have nothing to add whatsoever to the answer and defenses and counterclaim and the two motions filed yesterday morning. These are before the Court and that is all I have to say with respect to any of them. *** (p.5) they are self-explanatory and need no further explanation from me so far as I know at all.

C.: Well, I am giving you an opportunity, Mr. Whiteside, to present any evidence that you have to support the allegations that you made in your complaint which accused the judges of the state court of certain conduct and which statements are the basis for this proceeding. Do you have any evidence that you want to offer?

W.: If your Honor please, I have nothing to offer of any kind whatsoever, except what has been offered already to this Court and in this record.

C.: Now, Mr. Whiteside, in the event that the Court determines that disciplinary action should be taken, do you want to make any statement with reference to the measure of the action that the Court should order?

W.: If your Honor please, I have nothing to say whatsoever about what the Court does or desires to do, and it is quite evident in the answer that I protest the Court proceeding at all in this matter because of disqualification.*

(p.11) COURT: Is that true, Mr. Whiteside, what Mr. Newman said?

W.: It seems to me that the documents that were filed here in connection with this Quash motion, which were quite considerable, answered that. The purpose of filing those was to answer that question, that problem, and it shows that there were numerous letters back and forth between the family and the Court, the judges, and so on, which I hadn't mentioned at all to Mr. Newman in the conversation, because he didn't ask that question. ******

(p.12) COURT: That is true, isn't it, Mr. Whiteside, or do you have some evidence that you wish to offer now?

W.: If your Honor please, I have nothing to add today to what has been presented before, nothing whatsoever, and I only refer to anything before in answer to these questions you were directing at me, not because I wish to present any evidence whatsoever today.

C.: What is the answer to the question I present to you, regardless of whether you want to present that evidence or not: Did you at the time you made that allegation in Paragraph 20 have any evidence other than what appeared on the court record in the State of Connecticut of the conduct of Judge Coles?

W.: The only evidence that I have on those things has already been presented to this Court, and I can only refer the Court to what is shown in the records of this Court.

C.: Anything further? (No response) You have indicated pretty clearly, Mr. Whiteside, that you propose to appeal from any action which this Court may take in these proceedings and, therefore, I think in order to complete the final step at this level of the proceedings I will file a short memorandum containing my decision in this case. We will now recess until two o'clock. What was that, Mr. Whiteside?

W.: I was just asking if our case is ended.

C.: The case involving Loring J. Whiteside is ended.**,

W.: Thank you, your Honor. END.

EXCERPTS FROM EXHIBIT A

29 PAGE TRANSCRIPT OF HEARING ON MARCH 22, 1963 BEFORE JUDGE JOHN C. FITZGERALD

(Page 5) MR. DE ANDRADE: Has your Honor read this affidavit?
THE COURT: No, I haven't.
(Page 6) DE ANDRADE: It is the large one wrapped in blue there, I believe. ***
COURT: This is a motion to set aside non-suit. You don't mean that, do you?
DE ANDRADE: Yes, I do, your Honor. There is a 48 page affidavit connected to that. Your Honor can pick any page he wants and read excerpts.
(Page 14) COURT: I have just urged counsel of Mr. Gallagher to communicate with him and see if there can be reinstated --
DE ANDRADE: I think, if I might interrupt, I think that he would take my recommendation to still give custody to the parents on the initial agreement, if made that they pay the funeral expenses, and one further condition (page 15) that I pointed out earlier to your Honor, that these three people publicly, and on the record of this court and in this file, so state that all of these allegations and claims are false and untrue and were made solely in the heat of this lawsuit.
COURT: Well, you did say that he struck his wife on a certain date. ***
DE ANDRAGE: Otherwise, if your Honor please, I could not, in all justice, recommend to Mr. Gallagher to settle this matter, because these people and my acquaintance with them in this matter, it would be disastrous for Mr. Gallagher. This would be taken as an admission of every single thing that has been said.
COURT: You want to discuss with your parents whether or not - this affidavit is here in the file, ***
DE ANDRADE: There are others as well, your Honor, other papers in this pleadings, in this matter, that contain - some of which contain the same things. In addition there are motions, I think, that the Court

should be cognizant of, that direct allegations as to the honesty and propriety of this Court. I think those should be publicly retracted as well, and these are -- *****

(Page 16) COURT: *** The body of your sister will be released and your parents and yourself will bury the body in such manner as you people see fit, if the parents pay the funeral expenses. Secondly, lawyer for your sister said that Mr. Gallagher, however, will not acquiesce in that form of compromise, unless some written statement is made withdrawing the accusations against him, as appear in this affidavit. You want to consider that with your parents, whether they are willing to have noted on a piece of paper that the matters recited in their affidavit of January 21, 1963, insofar as such relate to the conduct of the said Kenneth Gallagher, are withdrawn? Would you be satisfied with the expression "Withdrawn"?

DE ANDRADE: No, your Honor, I would not.

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EXCERPTS FROM EXHIBIT B

14 PAGE TRANSCRIPT OF HEARING ON OCTOBER 25, 1963 BEFORE STATE JUDGE ALBERT L. COLES

(Page 10) THE COURT: Now let's see. You had an order to cease and desist. Now, what was that?

MRS. CRAVENS: The argument in support of this motion is for the distinct purpose of bringing to your attention unprofessional and criminal conduct of Attorney DeAndrade, which then makes it obligatory upon this Court to take corrective action, first by adverse (Page 11) comment, and if that proves ineffective, then, by sending the matter at once to the proper investigating and disciplinary authorities as is specifically stated in Canon 11 of the Judicial Ethics which, no doubt, your Honor is familiar.

THE COURT: Is he committing any criminal act right now?

CRAVENS: He is not in this courtroom at the present time.

COURT: Beg pardon.

CRAVENS: Under the presence of Judge FitzGerald, which is -- --

COURT: Madam, you are on dangerous ground. I can't and won't permit statements which are made particularly when the questioner charges any person, you or me or anyone else, with criminal acts made on the record here, without severe and difficult results, if they are not proved, and I asked you before you embarked upon this motion for an order against any person to cease and desist from criminal acts, you tell me what the criminal acts are which he is now committing, and if you do so, you will be held responsible for proving them.

CRAVENS: Well, these are the acts he has already committed, your Honor.

COURT: Well, you take an issue with those. We will make no order at this time concerning any act or any conduct of any person who is in any way connected with (Page 12) your claims in that appeal. It is improper to. You wouldn't want me to make one against you and I won't make one against anyone else. We are all in-

volved on your allegations and statements and pleadings in this matter, which is returnable to the Superior Court in the original file, which is now on appeal. I say to you the thing will remain just as it is. We will take no action which will affect the persons, you or your parents or any attorney involved or any defendant involved who are concerned, in any way, in that action. I won't do it because it will be unfair and unjust and improper to interfere in that proceeding in any way. Now, I suggest again that having examined this last motion that it is a proceeding which reviews what you claim are the wrongs that are done to you and your family and your sister's estate and your sister, by individuals and I will deny that motion or for an order, and I suggest to you, most sincerely, don't make any more motions of that type. You wouldn't want to have on the record here written statements about you or your parents guilty of any crime.

CRAVENS: These are things that actually happened.

COURT: I know you say they have and repeated it and repeated it and repeated it and I caution you not to repeat it any more because you are close to getting yourself into trouble making statements like this, your statements or your accusations made time and time and time (Page 13) again. Now it is time to stop. I told you that the appeal is pending. You have a perfect right to file your brief. Devote your time and attention to doing that and you will do yourself and your parents and the memory of your sister a great deal more justice than you will by repeating and charging these other people with the commission of all sorts of crime.

CRAVENS: May I say that -- --

COURT: They will get their due when this appeal is heard.

CRAVENS: May I ask your Honor why it is impossible for my parents and us to just get any justice? Why is it impossible?

COURT: Well, I am not prepared -- --

CRAVENS: Whatever we do is wrong.

COURT: -- -- to answer questions of that type, Madam. I am prepared, and perhaps I shouldn't, to try to ad-

vise you, and other courts have done so, to their regret, I know. What you should be doing, instead of preparing this sort of memo -- --

CRAVENS: We have had two years of -- --

COURT: After I have reviewed this, I may very well expunge it, ask that it be impounded and put under lock and key because you have said things no one should say about other people in a matter of this sort. You are saying why they can't get justice. I'll answer it. And the only answer I can make is this: by examining (Page 14) this file, you have had more than ample opportunity to get justice. You don't agree with the disposition but justice certainly has been done here. That is my view of it and I know it isn't yours but you ask and that is my answer to it. I will deny both of those motions. I will certainly not issue any order for equitable relief nor will I issue any order to cease and desist for the reasons which I have already stated voluminously on the record. That is it.

We will recess until Tuesday at 10 o'clock.

(Court Adjourned)